26523

(18,947.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 296.

WILLIAM J. BUTTFIELD, PLAINTIFF IN ERROR,

vs.

GEORGE R. BIDWELL.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., MAY 28, 1903.

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United States for the southern district of New York, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, or some of you, between William J. Buttfield, plaintiff, and George R. Bidwell, defendant, a manifest error hath happened, to the great damage of the said William J. Buttfield, plaintiff, as is said and appears by his complaint: we, being willing that such error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the justices of the Supreme Court of the United States, at the Capitol in the city of Washington, together with this writ, so that you have the same at the said place, before the justices aforesaid, on the 20th day of April 1903, that the record and proceedings aforesaid being inspected, the said justices of the Supreme Court may cause further to be done therein, to correct that error, what of right and according to the law and custom of the United States ought to be done.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 23d day of March, in the year of our Lord one thousand nine hundred and three, and of the Independence of the United States the one hundred and twenty-seventh.

Seal of U. S. Circuit Court, South. Dist. New York.

JOHN A. SHIELDS,
Clerk of the Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit.

The foregoing writ is hereby allowed.

ALFRED C. COXE,
U. S. Circuit Judge.

2 [Endorsed:] E & A C 2025 Supreme Court of the United States. William J. Buttfield plaintiff in error, *vs.* George R. Bidwell defendant in error. Writ of error. James L. Bishop attorney for plaintiff in error. Due service of a copy of the within writ of error is hereby admitted this — day of ——, 189–. ——— ———, attorney for defendant in error. A copy of the within paper has been this day received at this office Mar. 25 1903. Henry L. Burnett, U. S. attorney, N. Y. 1.45 p'd U. S. circuit court, southern district New York. Filed Mar. 25 1903 John A. Shields, clerk.

UNITED STATES OF AMERICA,
Southern District of New York, } ss:

I, John A. Shields, clerk of the circuit court of the United States of America, for the southern district of New York, in the second circuit, by virtue of the foregoing writ of error, and in obedience thereto, do hereby certify that the following pages, numbered from three to 87 inclusive, contain a true and complete transcript of the record and proceedings had in said court in the cause of William J. Buttfield plaintiff in error, against George R. Bidwell, defendant in error, as the same remain of record and on file in said office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this twenty-third day of May in the year of our Lord, one thousand nine hundred and three and of the Independence of the United States the one hundred and twenty-seventh.

Seal of U. S. Circuit Court, South. Dist. New York.

JOHN A. SHIELDS, *Clerk.*

3 United States Circuit Court, Southern District of New York.

WILLIAM J. BUTTFIELD
against
GEORGE R. BIDWELL.

To the above-named defendant:

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer on the plaintiff's attorney within twenty days after the service of this summons, exclusive of the day of service; and in case of your failure to appear, or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, at the borough of Manhattan in the city of [L. S.] New York, this 24th day of M'ch, in the year one thousand nine hundred and two.

JOHN A. SHIELDS, *Clerk.*

JAMES L. BISHOP,
Plaintiff's Attorney.

Office and post office address 135 Broadway, borough of Manhattan, New York city.

4 Circuit Court of the United States for the Southern District of New York.

WILLIAM J. BUTTFIELD, Plaintiff,
against
GEORGE R. BIDWELL, Defendant.

William J. Buttfield the above named plaintiff complains of George R. Bidwell, the above named defendant and respectfully states:

First. For a first cause of action:

I. The plaintiff is a citizen of the State of New Jersey and a resident of the said State; the defendant is a citizen of the State of New York and resides within said State and within the southern district of New York.

II. At all times hereinafter mentioned, the plaintiff was and now is a member of a firm doing business under the name of W. J. Buttfield, composed of the plaintiff as general partner and Charles W. McCutchen as special partner and organized as a limited partnership under and pursuant to the laws of the State of New York. The said firm is and at the times hereinafter mentioned, was, engaged in business at the city of New York as importers and dealers in tea.

At all times hereinafter mentioned the defendant was and now is duly appointed and commissioned collector of customs of the United States at the port of New York, and was, and is, in the unre-
5 stricted and actual exercise of his functions as such collector and fully vested with all the powers and authority of his office.

III. On or about the 14th day of Decembr, 1901, the defendant being such collector as aforesaid did under color of his said office and by the improper exercise of the powers and authority vested in him for the purpose of the performance of his duties as such collector, unlawfully prevent the plaintiff from importing into the United States 226 packages of country green teas shipped from China and consigned to the firm of W. J. Buttfield at the port of New York, and which said teas arrived at said port by the steamer "Arara."

IV. The said teas were of the class known as country green teas. The said teas being subject to import duty were duly entered with the defendant as collector of customs at the port of New York by the plaintiff's firm under entry No. 182,851.

V. The plaintiff after the entry of said teas, as aforesaid, submitted to the tea examiner at the port of New York samples of said teas and the said examiner reported to the defendant that the said teas were inferior in quality to the standard for such country green tea fixed and established by the Secretary of the Treasury and promulgated by certain regulations issued by the said Secretary of the Treasury March 21st, 1901, and the defendant thereupon notified the plaintiff that the said teas were prohibited from importation into the United States.

The plaintiff thereupon protested against the finding of the
6 said examiner, and thereafter, the board of United States general appraisers designated by the Secretary of the Treasury, reported to the defendant that the said teas were inferior in quality to the standards prescribed by law, and the defendant thereupon notified the plaintiff that his protest was overruled.

The defendant thereupon refused to permit the plaintiff to withdraw the said teas from the control of the defendant for consumption in this country and prohibited and prevented the plaintiff from taking any other action with regard to said teas except to export them from the United States.

The said action of the defendant in preventing the plaintiff from importing the teas into the United States for consumption and in refusing to permit the plaintiff from taking any other action in respect thereto except to export the same from the United States, were wholly unauthorized and illegal.

The plaintiff further alleges, that he has been at all times ready and willing and has offered to pay the customs duties upon said teas to the defendant.

VI. The plaintiff alleges, upon information and belief that the defendant prevented the plaintiff from importing the said teas into the United States and refused to permit the plaintiff to take any other action or control over said teas, except to export them from the United States under color of an act of Congress approved March 2, 1897, entitled "An act to prevent the importation of impure and unwholesome tea."

Plaintiff alleges, that the said act of Congress is illegal and
7 void, and is in violation of the Constitution of the United States, because it attempts to confer upon the Secretary of the Treasury, upon the recommendation of a board of seven tea experts appointed by him, the power to regulate commerce with foreign nations, and to authorize the Secretary of the Treasury to prevent commerce by the citizens of the United States with foreign countries in wholesome articles of food, to wit: in wholesome teas of a high character and quality, and because by the said act the plaintiff was and is unlawfully deprived without due process of law of his property and of his right to engage in a useful and beneficial industry, in nowise injurious to the health, morals or welfare of the people.

The plaintiff further alleges, that the Secretary of the Treasury upon the recommendation of a board of tea experts appointed by him, established a standard known as "No. 7 country green" teas by regulation promulgated March 21, 1901, and that the defendant prevented the plaintiff from importing the said teas into the United States, upon the ground that the said teas were inferior in purity, quality and fitness for consumption to the said standard "No. 7 country green" teas. The said act did not empower the Secretary of the Treasury to establish a standard which would exclude from import wholesome teas, free from adulteration, of a fine character and quality and fit for consumption.

The plaintiff alleges, that said standard so fixed and established, did exclude from import into the United States wholesome teas free from adulteration of fine character and quality and in every respect fit for consumption.

8 VII. The said 226 packages of country green tea rejected as aforesaid, were of a high quality and grade of tea, wholesome and free from adulteration and fit for consumption, and upon payment of the proper custom's import duties, the plaintiff was entitled under the laws of the United States that the same should be released by the defendant as the collector of customs at the port of New York, and that the same should be admitted into the United States as lawful importations upon payment of such duties.

VIII. The said 226 packages of country green teas were in purity, quality and fitness for consumption superior to any valid standard fixed and established pursuant to any valid statute of the United States; or according to any valid executive order or regulation of the United States the United States Treasury Department or of any agent or official thereof.

IX. By reason of the wrongful acts of the defendant above set forth, the plaintiff has been put to large expense in and about the shipment of the said teas, the unloading and loading of the same, and has been prevented from realizing the market price of the said teas at the port of New York at the date of their arrival as he might otherwise have done, and has been compelled to export and sell the same at a great loss, and has otherwise been put to loss to his damage in the sum of seven hundred dollars.

Second. For a second cause of action:

I. The plaintiff repeats and realleges, as a part of this cause of action, all the allegations contained in paragraphs I and II of the first cause of action.

9 II. On or about the 11th day of January, 1902, the defendant being such collector, as aforesaid, did under color of his said office and by the improper exercise of the powers and authority vested in him for the purpose of the performance of his duties as such collector, unlawfully prevent the plaintiff from importing into the United States 1275 packages of country green teas shipped from China and consigned to the firm of W. J. Buttfield at the port of New York, and which said teas arrived at said port by the steamers "Glengyle" and "Ataka."

III. The said teas were of the class known as country green teas. Said teas being subject to import duty, were duly entered with the defendant as collector of customs at the port of New York by the plaintiff's firm, 583 packages thereof in warehouse entry 207,944, and 692 packages thereof in warehouse entry 206,116.

IV. The plaintiff repeats and realleges as a part of this cause of action and concerning said 1275 packages of country green teas, all the allegations contained in paragraphs V, VI, VII and VIII of the first cause of action.

V. By reason of the wrongful acts of the defendant above set forth,

the plaintiff has been put to large expense in and about the shipment of the said teas, the unloading and loading the same, and has been prevented from realizing the market price of the said teas at the port of New York at the date of their arrival, as he might otherwise have done, and has been compelled to export and sell the same at a great loss, and has otherwise been put to loss to his damage in the sum of fifteen hundred dollars.

10 Third. For a third cause of action:

I. The plaintiff repeats and realleges, as a part of this cause of action, all the allegations contained in paragraphs I and II of the first cause of action.

II. On or about the 18th day of February, 1902, the defendant being such collector as aforesaid, did under color of his said office and by the improper exercise of the powers and authority vested in him for the purpose of the performance of his duties as such collector, unlawfully prevent the plaintiff from importing into the United States 189 packages of country green teas shipped from China and consigned to the firm of W. J. Buttfield at the port of New York, which said teas arrived at said port by the steamer "Satsuma."

III. The said teas were of the class known as country green teas. Said teas being subject to import duty were, duly entered with the defendant as collector of customs at the port of New York by the plaintiff's firm under entry No. 8,016.

The said refusal of the defendant to release the said teas upon payment of said duties, and the demand on his part for such certificate or finding as a condition of the right of the plaintiff to import the said teas into the United States, were wholly unauthorized and illegal.

IV. The plaintiff repeats and realleges, as a part of this cause of action, and concerning the said 189 packages of country green teas, all the allegations contained in paragraphs V, VI, VII and VIII in the first cause of action.

V. By reason of the wrongful acts of the defendant, above
11 set forth, the plaintiff has been put to large expense in and about the shipment of the said teas, the unloading and loading of the same, and has been prevented from realizing the market price of the said teas at the port of New York at the date of their arrival, as he might otherwise have done, and has been compelled to export and sell the same at a great loss, and has otherwise been put to loss to his damage in the sum of two hundred dollars.

Fourth. For a fourth cause of action:

I. The plaintiff repeats and realleges as a part of this cause of action, all the allegations contained in paragraphs I and II of the first cause of action.

II. On or about the 12th day of March, 1902, the defendant being such collector, as aforesaid, did under color of his said office and by the improper exercise of the powers and authority vested in him for the purpose of the performance of his duties as such collector,

unlawfully prevent the plaintiff from importing into the United States 258 packages of country green teas, shipped from China and consigned to the firm of W. J. Buttfield at the port of New York, which said teas arrived at said port by the steamer "Adana."

III. The said teas were of the class known as country green teas. Said teas being subject to import duty were duly entered with the defendant as collector at the port of New York by the plaintiff's firm under entry No. 13,326.

IV. The plaintiff repeats and realleges, as a part of this
12 action, and concerning the said 258 packages of country green teas, all the allegations contained in paragraphs V, VI, VII and VIII in the first cause of action.

V. By reason of the wrongful acts of the defendant above set forth, the plaintiff has been put to large expense in and about the shipment of the said teas, the unloading and loading of the same, and has been prevented from realizing the market price of the said teas at the port of New York at the date of their arrival, as he might otherwise have done, and has been compelled to export and sell the same at a great loss, and has otherwise been put to loss to his damage in the sum of four hundred dollars.

Wherefore this plaintiff demands judgment against the defendant for the sum of twenty-eight hundred ($2800.00) dollars with interest on seven hundred ($700.) dollars from the 14th day of December, 1901, and on fifteen hundred ($1500.) dollars thereof from January 11th, 1902, and two hundred ($200.) dollars thereof from February 18th, 1902 and on four hundred ($400.) dollars thereof from the 12th day of March, 1902, together with the costs of this action.

JAMES L. BISHOP,
Attorney for Plaintiff.

P. O. address and office, 135 Broadway, Manhattan borough, New York.

SOUTHERN DISTRICT OF NEW YORK, }
County of New York, } ss:

William J. Buttfield, being duly sworn deposes and says:
13 That he is the plaintiff in this action; that he has read the foregoing complaint and knows the contents thereof; that the same is true to the knowledge of deponent, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

WILLIAM J. BUTTFIELD.

Sworn to before me this 24th day of March, 1902.

[SEAL.]

C. B. C. FOWLER,
Notary Public for Kings Co., and Certificate Filed in N. Y. Co.

(Endorsed:) Circuit court of the U. S., southern dist. of New York.—William J. Buttfield, plaintiff, *vs.* George R. Bidwell, defendant.—Complaint.—James L. Bishop, attorney for plaintiff, No. 135 Broadway, New York city.—I hereby certify, that on the 24th day of March, 1902, at the city of New York, in my district I served the within summons and complaint upon the within named George R. Bidwell, as collector of customs, &c. by exhibiting to F. A. McAvoy, as acting deputy collector of customs the within originals, and at the same time leaving with him a copy of each thereof. Wm. Henkel, United States marshal southern district of New York. Dated Mar. 24, 1902. U. S. circuit court, southern district of New York. Filed Mar. 24, 1902, John A. Shields, clerk.

14 Circuit Court of the United States for the Southern District of New York.

WILLIAM J. BUTTFIELD, Plaintiff,
against
GEORGE R. BIDWELL, Defendant. } Answer.

The defendant above named answers the complaint as follows:

I. He denies that he has any knowledge or information sufficient to form a belief as to the truth of the allegation that the plaintiff is a citizen of the State of New Jersey.

II. He admits that at the times mentioned in the complaint and that at the commencement of this action he was the duly appointed and commissioned collector of customs of the United States at the port of New York, but he alleges that heretofore and shortly after the commencement of this action his resignation of said office took effect and he ceased to be collector.

III. He denies on information and belief each and every allegation of paragraphs III to IX inclusive of the first cause of action in said complaint; II to V inclusive of the second cause of action in said complaint; II to V inclusive of the third cause of action in said complaint; and II to V inclusive of the fourth cause of action in said complaint.

HENRY L. BURNETT,
United States Attorney.

15 FOR THE SOUTHERN DISTRICT OF NEW YORK, } ss.:
County of New York,

George R. Bidwell, being duly sworn, says: I am the defendant above named. The foregoing answer is true to my own knowledge except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe them to be true.

GEORGE R. BIDWELL.

Sworn to before me this 19th day of June, 1902.

FRANCIS B. ANTZ,
[SEAL.] *Notary Public.*

(Endorsed:) U. S. circuit court, southern district of New York.—William J. Buttfield *vs.* George R. Bidwell, Answer.—Henry L. Burnett, United States attorney, attorney for defendant.—A copy received June 20, 1902. James L. Bishop, attorney for Buttfield.—U. S. circuit court, southern district of New York, Filed Jun- 20, 1902, John A. Shields, clerk.

16 At a stated term of the circuit court of the United States of America, for the southern district of New York, in the second circuit, held at the United States court rooms in the borough of Manhattan in the city of New York, on Wednesday the 22nd day of October, in the year of our Lord one thousand nine hundred and two.

Present: The Honorable Alfred C. Coxe, circuit judge.

WILLIAM J. BUTTFIELD
vs.
GEORGE R. BIDWELL.

Now comes the plaintiff by James L. Bishop, Esq., his attorney and moves the trial of this cause. Likewise comes the defendant by Edward V. Whitney, Esq., his attorney. Thereupon a jury is impaneled and the cause proceeds to trial. After hearing the evidence for the plaintiff and the argument of counsel the jury on Thursday October 23rd, 1902 by direction of the court say they find a verdict for the defendant and so say they all.

An extract from the minutes.

[SEAL.] JOHN A. SHIELDS, *Clerk.*

17 United States Circuit Court, Southern District of New York.

WILLIAM J. BUTTFIELD, Plaintiff,
vs.
GEORGE R. BIDWELL, Defendant.

The above entitled action having come on for trial on a regular call of the calendar of said court at a session thereof held by the Honorable Alfred C. Coxe, circuit judge and a jury, on the 22nd day of October, 1902, in the United States court and post office building, in the city of New York, and said court having directed a verdict in favor of the defendant, and having ordered that judgment should be entered in said action in favor of the defendant against the plaintiff, with costs of said action, and said costs having been adjusted at the sum of twenty-four 50/100 dollars ($24.50/100)

Now on motion of Henry L. Burnett, United States attorney, for the defendant (Edward B. Whitney of counsel) it is

Ordered, adjudged and decreed that the defendant George R. Bidwell have judgment against the said plaintiff, upon the issues in said action dismissing the complaint upon its merits with costs, and

that he recover the sum of twenty-four 50/100 ($24.50/100) dollars costs, and that the defendant have execution therefor.

Judgment signed and entered this 12th day of March, 1903.

JOHN A. SHIELDS, *Clerk.*

18 Approved.

JAMES L. BISHOP,
Att'y for Pl'ff.

(Endorsed:) U. S. circuit court, southern district of New York.—William J. Buttfield, plaintiff *vs.* George R. Bidwell, defendant.—Judgment.—Henry L. Burnett, United States attorney, attorney for defendant.—U. S. circuit court, southern district of New York, Filed Mar. 12, 1903, 4.25 p. m., John A. Shields, clerk.

26525

United States Circuit Court,

1

SOUTHERN DISTRICT OF NEW YORK.

WILLIAM J. BUTTFIELD,
Plaintiff,

AGAINST

GEORGE R. BIDWELL,
Defendant.

Bill of Exceptions.

2

Be it remembered that at the Stated Term of the Circuit Court of the United States for the Southern District of New York, held at the Borough of Manhattan, City of New York, in said District, on the 22d day of October, 1902, the Honorable Alfred C. Coxe, a Judge of said Court, presiding, the above entitled cause coming on to be tried, the following proceedings were had, namely, a jury was duly impanelled and sworn.

APPEARANCES: 3

JAMES L. BISHOP and JAMES H. SIMPSON, for Plaintiff;

HENRY L. BURNETT, for Defendant; EDWARD B. WHITNEY, of Counsel.

The following contains all of the evidence and proceedings on the trial.

4 The plaintiff, to sustain the issues upon his part, called as a witness ROBERT HUNTER, who being duly sworn, was examined as follows:

By Mr. Bishop:

Q. You are connected with the Custom House? A. Yes, sir.

Q. What division or department? A. I am in the law division of the Custom House.

Q. Are the papers which are now produced by you the entries of the teas consigned to Mr. Buttfield by the steamer *Satsuma?* A. Yes, sir.

Q. And are these papers which I hand you the invoices of the goods covered by that entry? A. Yes,
5 sir.

The papers referred to are offered in evidence and marked Plaintiff's Exhibits 1 and 2.

Exhibit 1, is Invoice No. 9680 of teas arriving by S. S. *Satsuma*, none of which teas are included in this action.

Exhibit 2. is Invoice No. 9677 of teas arriving by S. S. *Satsuma*, of which the teas shown in Exhibit 3, were rejected as inferior to standard in quality.

Mr. Whitney: I assume this is only the 189 packages.

Mr. Bishop: Yes, sir.

6

Q. I show you Plaintiff's Exhibit 2 and I call your attention to the words and figures in red ink and I ask you to state what they are? A. It shows teas prohibited by law upon a report of the appraiser, our tea examiner.

Q. You can take this, then. I show you this. Are the marks and numbers on that paper similar to the marks and numbers on Exhibit No. 2? A. Yes, sir.

The paper referred to is offered in evidence and marked Plaintiff's Exhibit 3.

Plaintiff's Exhibit No. 3. 7

189 Packages Ex S. S. "SATSUMA"

Prohibited by Law.

Y T T F (in cross)	5	30	H/C	Inferior to Standard in quality.
"	6	33	"	
YYM (in diamond)	3	22	"	
E S M (in heart)	5	28	"	
S.K.T. (in triangle)	6	24	"	
P D T (in heart)	5/6	52	"	

8

Q. Please read from invoice No. 2 what is said with regard to these packages? A. "Is inferior to standard in quality. I. McG." That is the Examiner. "Dated January 24, 1902."

Q. Then referring to Exhibit 3, will you kindly state what those marks and numbers are? A. They are the marks and numbers of the packages of tea.

Q. Does it state how many packages of tea, the number of packages of tea? A. Yes, sir; it says thirty in one case.

9

Q. Does it state the number of packages of teas of each mark? A. Yes, sir.

Q. What does "H-F" mean there—the last mark? A. Half chest.

Q. Then that paper No. 3 shows the marks of the teas received by the steamer *Satsuma*? A. Yes, sir.

Q. The number of the packages of teas? A. Yes, sir.

Q. Of each mark? A. Yes, sir.

Q. And those are the teas which are shown on Exhibit No. 2 to have been rejected by the tea examiner for quality? A. Yes, sir.

Q. Will you hand me the entry for import in the case of the *Satsuma*? A. Yes, sir (producing).

Q. Is this paper which I show you, the entry for import of the teas by the steamer *Satsuma*? A. Yes, sir.

Paper offered in evidence and marked Exhibit 4.

Exhibit No. 4 is warehouse entry No. 8016, Bond No. 53,828, and includes Exhibits 1 and 2, together with invoices of other teas not rejected; also bills of lading, decision of Board of General Appraisers on rejected teas, weigher's returns, &c.

Warehouse bond given on said entry, offered in evidence and marked Exhibit 5.

The foregoing papers identify the 189 packages or half chests of tea with their respective marks and numbers, and upon the invoice is endorsed the aforesaid ruling of Isaac McGay, Esq., Examiner of Teas of the Port of New York.

Papers offered by Mr. Bishop and marked Exhibits 6, 7 and 8.

It is stipulated that the teas arriving by the steamers *Ataka*, *Adana* and *Glengyle* respectively, shown by said exhibits respectively, were entered for import by the plaintiff at the New York Custom House under Import Nos. 206,116, 13,326 and 207,944 respectively, in the same form as Exhibit 4; that the invoice including said teas was filed with the defendant in the same form as Exhibit 2; and that upon said invoice there is stamped in the same form as in said Exhibit 2, the tea examiner's ground of rejection as set opposite the marks and numbers on Exhibits 6, 7 and 8.

From said Exhibits 3, 6, 7 and 8 it appears that 189 packages or half chests from the steamer *Satsuma* were rejected by said Ex-

aminer as "inferior to standard in quality"; 13
that 605 ~~half~~ packages from the steamer *Ataka* were rejected by him as "inferior to standard in quality"; that 87 packages therefrom were rejected by him as "smoky Fychows, inferior to standard in quality"; that 258 packages from the steamer *Adana* were rejected by him as "inferior to standard in quality"; that 485 packages from the steamer *Glengyle* were rejected by him as "inferior to standard in quality," and that 148 packages therefrom were rejected by him as "inferior to standard in quality—smoky Fychows," and the marks and numbers of all the teas so rejected appear upon said exhibits. 14

It is also stipulated that a bond was given in each of the cases of the arrivals by the steamers *Adana* and *Glengyle* in the same form as Exhibit No. 5.

Q. Attached to Exhibit No. 2 there is a white paper; what is that, Mr. Hunter? A. That is the decision on the tea protest by the Board of General Appraisers.

Q. Referring to the teas shown in Exhibit No. 2 which the tea examiner rejected? A. Yes, sir.

Paper offered in evidence and marked Exhibit 9 and is on a printed form, the words and figures italicised not being part of said form, 15
but inserted therein, except the word "is" in the first paragraph thereof, which is a part of the form, but was underlined:

16 **Exhibit No. 9.**

OFFICE OF THE BOARD OF U. S. GENERAL APPRAISERS,

641 Washington Street,

NEW YORK, N. Y. February 15, 1902.

In replying,
refer to
Tea 1080,

COLLECTOR OF CUSTOMS,
Port of New York,
N. Y.

SIR:

17 In conformity with Section 8, of the Act of March 2, 1897, we have examined certain tea, or merchandise described as tea, designated by marks and numbers as herein below, imported by *W. J. Buttfield*, from *Shanghai*, per S. S. "*Satsuma*," entered *January 14th*, 1902, covered by the protest of *W. J. Buttfield*, transmitted by you on the *3rd* day of *Feby.*, 1902, and we find that the said tea *is* inferior in quality to the standards prescribed by law.

The appeal of the importer is accordingly *overruled*.

Respectfully,
WILBER F. LUNT,
W. B. HOWELL,
18 Board of General Appraisers.

Marks and numbers:

Y T T F (in cross)	No. 5,	P. D. T No. 5/6,
–"–	No. 6,	
Y. Y. M. (in diamond)	No. 3,	Invoice number 9677, inclosed.
E. S. M (in heart)	No. 5,	Samples mailed under separate cover.
S. K. T. (in triangle)	No. 6,	

Indorsed with a stamp as follows: "Correspondence received Feby. 17, 1902, N. Y. Custom House." 19
Indorsed in writing as follows: "App. & Importer notified Feby. 18/1902."

It is stipulated that a decision of the General Board of Appraisers, in form similar to Exhibit 9, was made in the case of teas shown on Exhibits 6, 7 and 8.

It is stipulated that a protest was made by the plaintiff against the findings of the tea examiners regarding the teas shown upon Exhibits 3, 6, 7 and 8, and that the matter was brought for decision before the Board of United States General Appraisers, said protest resulting 20
in the ruling shown in Exhibit 9 and the other rulings referred to in the stipulation relative to Exhibit 9.

Q. Mr. Hunter, are you familiar with the course of business at the Custom House with regard to these tea importations? A. Yes, sir.

Q. Under that custom can a tea importer withdraw any teas from bond before a ruling has been made and reports filed by the tea examiner? A. No, sir.

Q. Under the methods adopted at the Custom House, can a tea importer pay duties upon teas until they have been released by the action of the tea examiner? A. No, sir. 21

Q. Would a payment of duties upon teas under such circumstances be accepted? A. No, sir.

CROSS-EXAMINATION BY MR. WHITNEY:

Q. Mr. Hunter, I show you Exhibit 9 and notice that that is on a printed form; that is, printed in imitation of typewriting? A. Yes, sir.

Q. Is that the printed form always used by the Board of General Appraisers in their rulings on these protests? A. Yes, sir.

Q. The form reads at the end: "We find that the

tea is —— inferior in quality to the standard pre-
22 scribed by law." Now, where the ruling below is affirmed the word "is" is underlined, *and when it* is reversed the word "not" is inserted after "is." Is it not? A. Yes, sir.

JOHN W. RIDSDALE, being duly sworn for the plaintiff, testified as follows:

EXAMINED BY MR. BISHOP:

Q. Mr. Ridsdale, you are connected with the New York Custom House? A. I am.

Q. How long have you been connected with the
23 Custom House? A. Twenty years.

Q. In what department? A. In the third, or warehouse department.

Q. What position do you occupy there? A. I am chief withdrawal clerk and in charge of the room.

Q. You have been familiar with the course of business at the Custom House with regard to the importation of teas ever since the passage of the Act of 1897, have you not? A. I have a general idea, sir, of course, of entering goods, and have a correct one of withdrawal from warehouse.

Q. Now, state to us under what circumstances teas may be withdrawn from warehouse? A. On the payment of duties first. In the warehouse de-
24 partment we make an entry or copy of the warehouse entries you have here, on our ledgers. It lies in that state until such time as the importer presents a request to have certain samples taken for the general appraisers. As soon as the examiner makes his examination, the seventh division returns to us a list of these teas that have been released, or can be withdrawn by payment of duty,

Q. Can any other teas be drawn except such? A. No, sir, nothing but what has been released by the examiner.

Q. Have you with you the form used under such circumstances? A. I have a form of release. This

is the form sent to us from the seventh division, 25
taken from the invoice; the report of the examiner.

Q. *Is this* paper *which I* show you the blank form which is used? A. It is the form they receive. The one you have in your hand is signed by a deputy collector of the seventh division; that is the form we receive. We do not receive blank forms.

Q. But when it is signed by the deputy collector? A. That appears to be the same form, exactly, sir.

Mr. Bishop: This is offered in evidence, as the form referred to by the witness.

The Witness: The form upon which we act.

Marked Exhibit 10.

This form is headed "Permit for Release of Im- 26
ported Tea, examined by United States Officers under Act of March 2, 1897"; is dated at the Collector's office; is intended to be addressed to the importer, and is as follows:

"The following described tea imported by
in the
from on the
190 , viz. (Here follow marks and numbers, and description of merchandise), having been found by the United States Examiner not to come within the prohibition of the Act approved March 2, 1897, "to prevent the importation of impure and unwholesome tea" are hereby declared free from the control of the customs authorities so far as regards any 27
bond given pursuant to the regulations established under said Act," intended to be signed by a Deputy Collector.

Q. As I understand, such a permit as this signed by the Deputy Collector, must be received before any teas can be released? A. Before any withdrawal can be made on that bond.

Q. Teas which are not reported by the tea examiner or Board of General Appraisers as being equal to the standard in purity, quality and fitness for consumption, are not entered upon this blank? A. No, sir, not on that blank; only the released teas.

28 Q. Can an importer remove or withdraw for consumption from the bonded warehouse, teas which have been entered, without first obtaining a report of the tea examiner, or of the Board of General Appraisers, that the teas are equal to the standard in purity, quality and fitness for consumption? A. No, sir, he cannot.

Q. Can he pay the duties before such a report is presented? A. No, sir.

Q. An offer to pay duty under such circumstances would be useless? A. That would have to be made to the Collector. We would throw out the withdrawal on a tea not released. You can make an offer, of course, to the Collector to pay certain
29 moneys, but we should not pass the withdrawal.

Q. Have you any knowledge about the landing of the tea? A. It is not in our department. I understand the system. When the tea arrives by a vessel the importer presents his bill of lading and invoice to the second division, whereupon they make entries of the teas according to the bill of lading and invoice. Then a permit is given to an inspector directing him to send to a bonded warehouse so and so, all that tea. As soon as it is sent there it becomes in possession of the third division or warehouse division.

Q. Who signs that permit? A. Either the entry clerk or somebody in the second division; generally
30 signed by the deputy collector of the second division where all entries are made.

Mr. Bishop: I ask to have stricken out the last part of the answer to my question, "an offer to pay it under such circumstances would be useless."

Motion objected to, and denied.

Mr. Bishop: It is merely a conclusion of the witness as to what might be done with the Collector. I asked him whether in his department, under the control of his division, these teas would be released without the payment, and he said they would not. Now, what might be done elsewhere is immaterial.

The Court: The motion to strike out is denied. 31

Exception taken by Mr. Bishop.

Q. Is this the form of permit for landing which is used (showing)? A. That is the form of permit for landing.

Offered in evidence and marked Exhibit 11.

Exhibit No. 11.

ORDER TO SEND GOODS TO BONDED WAREHOUSE.

32

CUSTOM HOUSE, PORT OF NEW YORK,

....., 190 .

To the Inspector:

You are directed to send to the Bonded Warehouse, No. .....Street:

Marks.	Nos.	Description of Merchandise.	Ordered.

33

Imported on the ..... of .....

by .....

in the....., ... Master,

from .....

....

Naval Officer. Deputy Collector.

34 WILLIAM JAMES BUTTFIELD, being duly sworn, testified as follows:

EXAMINED BY MR. BISHOP:

Q. Mr. Buttfield, where do you reside? A. Plainfield, New Jersey.

Q. Are you a citizen of the United States? A. I am.

Q. What is your business? A. Tea importer.

Q. What is your firm? A. W. J. Buttfield.

Q. Who compose the firm? A. Charles W. McCutchen, special partner; myself, general partner.

Q. How long have you been engaged in the business of importing teas? A. I have been in the tea
35 trade twenty-one years, and in importing teas into the United States fifteen years.

Q. Are you familiar with the different qualities and grades of teas? A. I am.

Q. Have you had a large experience in that matter? A. Considerable.

Q. Can you state about what proportion of the teas imported at the port of New York are imported by your firm? A. I should think on an average about twenty per cent.

Q. Are you familiar with the standard No. 7 country green teas established by the regulations of the Secretary of the Treasury, March 21, 1901? A. Yes.

36 Q. What do you mean by country green teas? A. They are green teas that arrive from China that are grown in China in distinction to Ping Suey green teas, which are also grown in China.

Q. Do they come from certain localities? A. A certain district in China.

Q. Do they include teas which come from several parts of the same district? A. There are a number of districts grouped together in the portion of China from which these teas are imported.

Q. State whether these country green teas include various kinds of teas which have different

denominations, and then state what the denomina- 37
tions are? A. Country green teas are divided into four or five classes known as Moyune, Teenkai, Fychow, Wenchow and Shanghai packed.

Q. Does this schedule which I now show you state correctly the various grades of the kinds of teas which you have mentioned, by their quality? A. It does.

Paper offered in evidence.

Q. (By Mr. Whitney.) These various phrases on this schedule mean the trade names of the different qualities of teas? A. They do.

Q. And where it says "fully good medium Moyune," for instance, that means simply that that is 38
the trade name of that particular grade of Moyune? A. That is so.

Q. And that, in your opinion that is the grade next above the good medium Moyune, that is next below it? A. That is correct.

The Court: I think it may be received as a condensed statement of his testimony.

Paper marked Exhibit 12.

39

Exhibit No. 12.

SCHEDULE OF COUNTRY GREEN TEAS ARRANGED IN ORDER OF QUALITY.

1	Choicest Moyune				
2	Choice Moyune	Choicest Teenkai			
3	Finest Moyune	Choice Teenkai			
4	Fine to Finest Moyune	Finest Teenkai			
5	Fine Moyune	Fine to Finest Teenkai			
6	On Fine Moyune	Fine Teenkai			
7	Fully Good Medium Moyune	On Fine Teenkai			
8	Good Medium Moyune	Fully Good Medium Teenkai	Finest Fychow		
9	On Good Medium Moyune	Good Medium Teenkai	Fine "		
10	Fair Moyune	On Good Teenkai	Good Medium Fychow	Finest Wenchow	
11	Good Common Moyune	Fair Teenkai	Fair "	Fine "	
12	Common Moyune	Good Common Moyune	Good Common "	Good Med. "	Good, clean, genuine Shanghai packed.
13		Common Teenkai	Common	Fair "	
14				Good Common	
15				Common "	
16					Mixed, Shanghai packed.
17					Common, refired and adulterated Shanghai packed.

It is agreed that a certain prescribed quantity of 43
physical tea was made the standard of Country Green Tea for the year 1901 by the selection of the Board of Tea Experts, and approval of the Secretary of the Treasury and that if "quality" means taste and flavor, the plaintiff's importations involved in the present case were not up to the standard No. 7 Country Green Tea established by the Secretary.

The Treasury Department Circular No. 35 of March 31, 1901, purporting to contain the law and regulations governing the importation and inspection of tea for said year, including a list of tea standards for said year and signed by O. L. Spaulding, Assistant Secretary, was put in evidence by Mr. Bishop. It is agreed that this document, being one of which 44
the Court may take judicial notice, need not be printed in the bill of exceptions, but may be referred to by either party upon the argument.

The following paragraphs, however, are inserted for convenience:

VIII.—No teas found on final examination to be unlawful importations under this act shall be released from bond except for the purpose of immediate exportation, or for destruction, as the case may be.

XI.—The examination of tea by examiners or boards of United States general appraisers under this act shall be made according to the usages and 45
customs of the tea trade, including the testing of an infusion in boiling water, and, if necessary, chemical analysis.

XIX.—The following are the standards selected by the board of tea experts, which are hereby fixed and established as standards under this act for the year 1901:.

No. 1. Formosa Ooloong.
No. 2. Foochow Ooloong.
No. 3. North China Congou.

46 No. 4. South China Congou.
No. 5. India tea (use for Ceylon tea).
No. 6. Pingsuey green tea.
No. 7. Country green tea.
No. 8. Japan pan tea fired (use for sun dried).
No. 9. Japan tea basket fired.
No. 10. Japan tea dust or fannings.
No. 11. Capers (use for scented Orange Pekoe).
No. 12. Canton Ooloong tea (*a*).
No. 13. Scented Canton tea (*a*).

COMPARISON WITH STANDARDS.

47 XX.—In comparing with standards, examiners are to test all the teas on these points, namely: For quality, for any foreign matter on the surface of the infusion, sometimes called scum, and for quality of infusion. Quality shall be ascertained by drawing according to the custom of the tea trade with the weight of a half dime to the cup. The quality must be equal to standard, but the flavor may be that of a different district as long as it is equal in sweetness. As an illustration, a Teenkai may be equal to a Moyune, but a distinctly smoky or rank Fychow, or Wenchow of sour character, must not be considered as equal to the two first mentioned.

48 XXI.—In order to test for floating coloring matter or scum, and also for the quality of infusion, a second drawing should be made of double the foregoing weight. Before disturbing the infusion examination should be made for any floating substance, and after pouring off the water the infused leaf should be taken out so as to exhibit the lower side which rested against the cup. Should the mass show a larger quantity of exhausted or decayed leaf or foreign substance than the standard, it shall be considered inferior in quality, and the tea must be rejected. In Greens and Japans particularly the brightness of the leaf should be considered as an evidence of quality.

XXII.—Should a tea prove, on examination, to be inferior to the standard in any one of the requisites, namely, quality, scum, or quality of infusion, it shall be rejected, notwithstanding that it be superior to the standard in some of the qualifications. No consideration shall be given to the appearance or so-called style of the dry leaf.

XXIX.—In all cases of rejections by examiners, the importer should be notified of the reason for rejection—that is, whether it be on the ground of quality, character of infusion, dust, scum, or admixture with foreign substance.

Q. (By Mr. Bishop.) Referring to this schedule, Exhibit No. 12, will you state what grade of teas the standard No. 7 for the year 1901 was as to quality? A. The quality of standard No. 7 was that of finest Teenkai.

Q. As shown upon that schedule No. 12? A. In this schedule No. 12.

Q. Are you familiar with the grades or properties of teas shown upon that schedule below, No. 5? A. I am.

Q. State whether or not those grades, any of them, and if so, which are pure and wholesome and free from adulteration. A. All the qualities specified, numberin, from No. 6 to No. 15, are pure and wholesome and fit for consumption and free from adulteration.

Q. And they have been ordinary subjects of commerce? A. Always in my recollection.

Q. Were they admissible under the standard fixed by the Secretary of the Treasury previous to 1901? A. Most of them.

Q. Now, referring to the teas shown upon Exhibits 3, 6, 7 and 8, which are the teas in controversy in this case; have you examined those teas? A. I have.

Q. Will you state whether they are or are not pure? A. They are all pure.

52 Q. Are they genuine tea leaves? A. In my opinion they are all genuine tea leaves.

Q. Are they wholesome and fit for consumption? A. Certainly, sir.

Q. Is there anything about these teas which render them unsuitable for articles of food? A. Not in my opinion.

Q. Are Ping Suey teas green teas? A. They are.

Q. How does the standard for Ping Suey teas for 1901 compare with the standard for country green teas of that year? A. Very much inferior in quality.

Q. And how do the teas shown upon Exhibits Nos. 3, 6, 7 and 8, compare in quality with the standard for Ping Suey of 1901? A. They are all
53 superior in quality.

Q. Now, referring to the teas on Exhibits 3, 6, 7 and 8, can you state whether those teas were admissible under the standard previous to 1901? A. In my opinion they were all equal to the standard established previous to March, 1901.

Q. And are they equal to the standard now in operation; that is the standard for 1902? A. They are.

Q. And admissible under that standard? A. In my opinion.

Q. Have any of these teas of the same class which were rejected in 1901, been admitted under the standard of 1902, to your personal knowledge? A.
54 Yes, sir.

All this line of testimony was taken subject to defendant's objection on the following grounds, namely: that Act of 1897 authorizes the board to establish standards which take into consideration not only purity and wholesomeness but also quality, meaning thereby the attributes that are tested by the senses of smell and taste; that the standard, having been selected by Government officials appointed by Congress for that purpose, is conclusive and cannot be reviewed in any Court, and therefore

it is entirely immaterial to go into any question of dispute as to whether or not any particular grade of tea, as recognized by the tea trade, was admitted or excluded; and that it is not claimed in the complaint that any error was made by the examiner of teas or by the board of appraisers in their comparison with the standard.

Q. I show you notices from the United States Customs Service Collector's office, and ask you whether these were received by you? A. They were.

Offered in evidence and marked Exhibits 13, 14 and 15.

These exhibits are upon a printed form headed "Notice of Condemnation of Tea"; are signed by John D. Terry, Deputy Collector, addressed to W. J. Buttfield, 106 Wall street, identifying the teas therein referred to (being the teas imported on the steamers *Ataka*, *Glengyle*, *Adana* and *Satsuma*, and rejected as aforesaid) by marks and numbers, it is upon the following form:

Entry No.....
Ship ....

Notice of Condemnation of Tea.

UNITED STATES CUSTOMS SERVICE,

PORT OF NEW YORK,

COLLECTOR'S OFFICE, ..., 189 .

To.....

.....

.....

.....lot of tea from.....
covered by invoice No. ....., entered by you on
..... has been condemned by the United

States "EXAMINER" of tea for the district, in accordance with law.

If you dispute the action of said "Examiner," and desire a review of such return by a Board of three General Appraisers, it will be necessary for you to notify me thereof, within ten days from this date, as provided in Department Regulations of April 21, 1897.

Deputy Collector.

Annexed thereto are notices signed by the Collector or by a Special Deputy Collector of which the following is a sample, the invoices and entry numbers being stated:

CUSTOMS SERVICE,
OFFICE OF THE COLLECTOR,
New York, N. Y.

FEBRUARY 18, 1902.

W. J. BUTTFIELD, Esq.,
87 Front St., New York.

SIR:

In accordance with the provisions of Section 8 of the Act of March 2, 1897, I transmit herewith two copies of the findings of the Board of General Appraisers, on the tea covered by your invoices Nos. 9677 and 9680, covered by entry No. 8016.

G. R. BIDWELL,
Collector.

Two enclosures.

Annexed thereto are copies of the rulings of the Board of General Appraisers on the form shown in Exhibit 9, signed in some instances by two, and in some instances by three members of the Board.

Q. What disposition was made by you of the teas shown on Exhibits 3, 6, 7 and 8? A. Final disposition?

Q. Yes. A. They were sold for export, or ex- 61
ported abroad.

Q. What was the occasion of your exporting them? A. For the reason that we were not permitted to—for the reason we were not allowed to withdraw them for consumption, and unless we exported the teas or sold them for export within six months, the teas would be destroyed.

The above question was objected to by plaintiff and a motion made to strike out the answer as asking for and stating a conclusion of the witness.

Q. Were those teas at all times after their arrival in this country, in a bonded warehouse? A. They 62
were, except in transit from the steamer to the bonded warehouse.

Q. And were they received on a permit to land similar to this Exhibit 11? A. On arrival of the steamer we received a permit from the Collector permitting us to store them in a bonded specified warehouse.

Mr. Bishop: I call upon you to produce two letters.

Mr. Whitney: Here is the only one we have received. There is no trace of any other.

Mr. Bishop: I offer in evidence a communication to the defendant from the plaintiff under date of March 13, 1902. 63

Marked Exhibit 16.

Said letter is as follows:

32

64 **Exhibit No. 16.**

FIRM OF W. J. BUTTFIELD

Successors to F. C. JENNINGS & Co.

106 Wall Street.

NEW YORK, March 13th, 1902.

Hon. GEORGE R. BIDWELL,
N. Y. City.

DEAR SIR:—

We beg to confirm our letter of February 25th,
65 1902.

Referring to your various communications advising us of the rejections of certain Teas covered by invoices and entries, as follows:

INVOICE	ENTRY
16956	13326
16964	13326
16950	13326
16954	13326
16918	13325
16968	13326
16966	13326
16961	13326

66 we protest against your refusing to admit for consumption in this Country the teas in question, on the ground that your action in so doing is illegal. We hereby notify you that we shall hold you personally liable for all damages that may be caused by said illegal acts on your part.

Yours respectfully,

W. J. BUTTFIELD.

The Court: Is there any question about the protest being regular?

Mr. Whitney: There is no question of a protest.

This is an action in tort and not an action in assumpsit. 67

It is admitted on the part of the defendant that the plaintiff's proceedings at the Custom House were regular from the time of the entry in this port until the time of the filing of the General Appraisers' report.

Q. (By the Court.) If you had sold this tea in the port of New York, how much would you have received for it? A. I have got the difference between what the teas were worth, the value of the teas in New York at the time of rejection, and what they realized. The total difference is $2,281.19; difference between New York value at the date of rejection and the prices realized, less freight, landing charges and selling commissions. 68

Mr. Bishop: Now, I offer in evidence a copy of a letter addressed to the defendant by the plaintiff, dated February 25, 1902.

Marked Exhibit 17.

69

34

70

Exhibit No. 17.

(Copy)

FEB. 25TH, 1902.

HON. GEORGE R. BIDWELL,
N. Y. City.

DEAR SIR:—

Referring to your various communications advising us of the rejections of certain Teas covered by invoices and entries as follows:

INVOICE	ENTRY
21408	182851
6091	192520
109	208081
23844	207944
23845	207944
22369	206116
23843	207944
23847	207944
23846	207944
22362	206116
22363	206116
22371	206116
9677	8016
9680	8016

71

72 we protest against your refusing to admit for consumption in this Country the teas in question, on the ground that your action in so doing is illegal. We hereby notify you that we shall hold you personally liable for all damages that may be caused by said illegal acts on your part.

Yours respectfully,

(Sgd.) W. J. BUTTFIELD.

CROSS-EXAMINATION BY MR. WHITNEY: 73

Q. I understand, Mr. Buttfield, that you got from the Collector, or rather the special Deputy Collector, a series of notices in the form of Exhibit 13, to which were appended copies of the ruling of the Board of General Appraisers. Is that so? A. We received notices signed by the special Deputy-Collector and also by the Collector.

Q. Being the notice in the form of Exhibit 13? A. Notice is dated January 11, 1902, from the customs service.

Q. If you look on the first page you will find that is Exhibit 13? A. Yes, sir.

Q. Now, the next thing that happened after the receipt of this notice was that you sold the goods for 74
export. Is that so? A. Yes, or we exported them ourselves.

Q. On the receipt of these notices you wrote these two letters of protest, Exhibits 16 and 17, and either exported the goods out of the country or else sold them to somebody else to export out of the country? A. That is correct.

Q. Won't you explain the reasons why you did that; you mean that having read the law and the regulations, and taken advice on them, you concluded that was the only thing practical for you to do? A. We knew from experience that was the only practicable thing to do.

Q. Now, you have stated that there were five 75
kinds of country green tea, Moyune, Teenkai, Fychow, Wenchow and Shanghai packed. Which kind of country green tea was it that you brought over on the steamer *Glengyle*? A. Some of them were Teenkais, some Moyunes and some Fychows.

Q. Were the other teas that you have spoken of, the *Ataka Satsuma* and *Adana*, teas distributed in about the same general way between the different kinds of country green teas? A. They graded from good Teenkais to fine Moyunes, ranged in the order of this schedule, marked Exhibit 12.

76 Q. Have you got a statement there showing what you claim to have been the grade of each one of these? A. I have.

Q. Then you state that in your opinion the various packages of tea that form the subject of your action here are ordinarily described as the grade and kind in this paper which you have handed to me? A. Various packages of tea which I have testified to are described.

Mr. Whitney: I will ask to have that marked in lieu of asking him the questions.

Marked Exhibit 18.

77

Exhibit No. 18.

692 Packages Ex S. S. "ATAKA."

A (in heart)	1/2	62	H/c		
B (in diamond)	1	28	"		
C (in triangle)	1	23	"		
D (in square)	1	40	"		
E (in star)	1	26	"		
F (in circle)	1	37	"		
G G (in double diamond)	1	33	"		
78 H H (in double heart)	1	24	"		
I I (in double triangle)	1/2	66	"		
J J (in double circle)	1	47	"		
K (in heart)	1	43	"		
W B M (in crescent)	13	16	"	3d Hyson	Good Teenkai
S F (in triangle)	5/6	24	"	3d Y. H.	Fully Good Moyune.
M M (in diamond)	6	52	"	4th Y. H.	Good Teenkai

79

A Q C (in triangle)	6	33	"	Good Style 2nd Y. H. Fine Teenkai
"	7	36	"	3d Y. H. "
"	8	15	"	3d Hyson "
K H M (in heart)	1	10 Cas.		Extra Gunpowder Fine Fychow Suspicion of smokiness.
"	2	25 H/c		1st Gunpowder
"	3	12	"	1st Imperial
"	4	10 Cas.		Extra Young Hyson
"	5	30 H/c		Clean 4th Young Hyson

80

583 Packages Ex S. S. "GLENGYLE"

Y Y X (in heart)	6	43 H/c		Good 3d Y. H. Good Teenkai
DYF (in diamond)	7	51	"	Good 3d Y. H. Fine Fychow
"	8	23	"	3d Hyson Fine Fychow
W B T (in crescent)	28	29	"	Good 3d Young Hyson Fine Fychow
"	29	19	"	Hyson Good 3d Fine Fychow
SHM (in diamond)	4	32	"	3d Young Hyson Fine Fychow

81

J (in diamond)	1	40	"	
Q K (K in heart)	1	50	"	Good Clean 3d Y. H.
L (in circle)	1	38	"	Fully Good Teenkai
T T C (in heart)	5/6	50	"	2nd Y. H. Fully Good Moyune
	7	19	"	Good 3d Hyson Fully Good Moyune

82	T H T (In heart)	5	23	"	Good 2nd Young Hyson Fully Good Soey Oan.
	YLM (In diamond)	6	18	"	3d Hyson On Good Moyune
	YTT (In square)	4	36	"	3d Young Hyson Fine Fychow
	T T H (In triangle)	1	8	Cas.	Extra Gunpowder Fine Fychow Little Smoky
	"	2	18	"	1st Gunpowder Fine Fychow
	"	4	44	H/c	3d Y. H. Fine Fychow
83	K H T (In heart)	4	47	"	3d Y. H. Good Teenkai

189 Packages Ex S. S. "SATSUMA"

	Y T T Y (In cross)	5	30	H/c	Good 2nd Y. H. Good Taenkai.
	"	6	33	"	3d Y. H. Good Teenkai
	YYM (In diamond)	3	22	"	3d " Fully Good Teenkai
	E S M (In heart)	5	28	"	3d Y. H. Fully Good Teenkai
84	S K T (In triangle)	6	24	"	Good 2nd Y. H. Fully Good Teenkai
	P D T (In heart)	5/6	52		3d Y. H. On Good Teenkai

258 Packages Ex S. S. "ADANA"

	M M YTE (YTE in triangle)	7	9	H/c	4th Y. H. Fine Moyune.
	H H T (In heart)	6	40	"	Good 3d Y. H. Fine Teenkai

T CKM (CKM in diamond)	6	28	"	3d " On " "
HSM	5	28	"	" " " " "
M H C (M in diamond)	2	8	"	Well Made 1st Gunpowder Good Teenkai
"	4	15	"	3d Y. H. Good Teenkai
Y L T (in heart)	4	6	"	3d Imperial Fine Teenkai
"	6	40	"	Good 3d Y. H. "
"	7	21	"	3d Hyson "
T F N (in triangle)	3	6	"	1st Imperial Good Teenkai
"	5	20	"	1st Y. H. "
"	6	37	"	3d Y. H.

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Q. (By Mr. Bishop,) Did you at any time receive a permit releasing any of the teas shown in these Exhibits 3, 6, 7 and 8? A. No.

ELMSLIE M. GILLET, being duly sworn, on behalf of the plaintiff, testified as follows:

EXAMINED BY MR. BISHOP:

Q. Mr. Gillet, where do you reside? A. 137 East Forty-fourth street.

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Q. What is your business? A. I am a tea broker.

Q. What is your firm? A. James and John R. Montgomery.

Q. How long have you been engaged in that business? A. Thirty-four years about.

Q. You are familiar with the grades and qualities of teas which are brought to this port and sold in this market? A. I am.

Q. And which are imported? A. Yes.

Q. I show you this paper marked Plaintiff's Exhibit 12, and which purports to be a schedule of country green teas, ranged in order of qualities from

88 the highest to the lowest, and I ask you whether that is a correct and accurate classification of such teas?

Mr. Whitney: The testimony of this witness is subject to the same objections as made to the testimony of Mr. Buttfield.

The Court: Yes.

A. This seems to be a schedule in perpendicular columns representing districts, and horizontal lines equal grades.

Q. Are you familiar with the standard No. 7 of country green teas for the year 1901? A. I am.

Q. Will you please state what the quality of that
89 standard was as compared with the classification of teas shown on Exhibit 12? A. The finest Teenkai.

Q. Do you observe a line drawn across that paper, Exhibit 12? A. Yes, sir.

Q. Does that correctly state the place of the grades of the quality of the standard No. 7? A. It does.

Q. (By the Court.) You mean by that all above that were admitted and all below it were excluded? A. All above were above the standard and all below should be excluded. I cannot say all were. All below the line under that standard should be excluded under the standard of 1901.

Q. (By Mr. Bishop.) Now, what have you to say
90 in regard to the classifications below that line as to their purity and freedom from adulterations and wholesomeness and fitness for consumption? A. I have seen teas of all these grades that were perfectly fit for consumption, down to common Wenchow, and I have seen common Wenchows that were fit.

Q. Is there anything in the classification of these teas below No. 5 which would probably or presumably show that they were unfit for consumption, and if so, which of those classifications? A. Well, the only ones that of necessity would be unfit for consumption would be mixed Shanghai packed, common refired and adulterated Shanghai packed.

Q. Are those the classifications below the second line? A. Yes, those are below the second line.

Q. What have you to say about the classifications above the second line, between the second and the first line? A. In what respect.

Q. In respect to whether there was anything in the classification which would indicate that they were probably unfit for consumption? A. No, sir? as I have already stated I have seen common Wenchows that were fit for consumption.

Q. How about the grades above that? A. Above that they are all right.

Q. When you say "all right," what do you mean? A. I mean that they are perfectly fit for consumption; pure teas.

Q. Pure teas and proper articles of food? A. Proper articles of food.

Q. Have you made an expert examination of the teas shown upon these Exhibits 3, 6, 7 and 8? A. I could not tell from this whether I have or not.

Q. Take your own memorandum, if you have it (paper shown witness marked Exhibit 19).

Exhibit No. 19.

Y Y X (in heart)	6	43 H/c Y. H.	ex SS. "Glengyle"	Good Teenkai
DYF (in diamond)	7	51 H/c Y. H.	"	Fine Fychow
	8	23 H/c Hysons	"	
W B T (in crescent)	28	29 H/c Y. H.	"	G M Teenkai
	29	19 H/c Hyson	"	
SHM (in diamond)	4	32 H/c Y. H.	"	Fine Fychow
J (in diamond)	4	40 H/c Y. H.	"	
Q K (K in heart)	1	50 H/c Y. H.	"	G M Teenkai
L (in circle)	1	38 H/c Y. H.	"	

94	T T C (in heart)	5/6	50	H/c Y. H.	"	O G "
		7	19	H/c Hyson	"	
	T H T (in heart)	5	23	H/c Y. H.	"	Fully Good Soeyoan.
	YLM (in diamond)	6	18	H/c Hysons	"	O G M Mo.
	A (in heart)	1/2	62	H/c Y. H.	ex SS. "Ataka"	
	B (in diamond)	1	28	H/c Y. H.	"	
	C (in triangle)	1	23	H/c Y. H.	"	
	D (in square)	1	40	H/c Y. H.	"	
95	E (in star)	1	26	H/c Y. H.	"	
	F (in circle)	1	37	H/c Y. H.	"	G M Teenkai
	G G (in double diamond)	1	33	H/c Y. H.	"	
	H H (in double heart)	1	24	H/c Y. H.	"	
	I I (in double triangle)	1/2	66	H/c Y. H.	"	
	J J (in double circle)	1	47	H/c Y. H.	"	
	K (in heart)	1	43	H/c Y. H.	"	
	W B M (in crescent)	13	16	H/c Hyson	"	G M Teenkai
96	S F (in triangle)	5/6	24	H/c Y. H.	"	O G "
	M M (in diamond)	6	52	H/c Y. H.	"	G "
	A Q C (in triangle)	6	33	H/c Y. H.	"	F G M "
		7	36	H/c Y. H.	"	
		8	15	H/c Hyson	"	
			605			
	YTT (in square)	4	36	H/c Y. H.	ex SS. "Glengyle"	Fine Fychow
	T T H (in triangle)	1	8	Cas. Gunpdr.	"	

	2	13	Cas. Gunpdr.	"	F G M	Teenkai
	4	44	H/c Y. H.	"		
K H T (in heart)	4	47	H/c Y. H.	"	G M	"
K H M (in heart)	1	10	Cas. Gunpdr.	ex SS. "Ataka"		
	2	25	H/c Gunpdr.	"		
	3	12	H/c Impl.	"		Fine Fychow
	4	10	Cas. F. Mee	"		
	5	30	H/c Y. H.	"		
		87				
Y T T Y (in cross)	5	30	H/c Y. H.	ex SS. "Satsuma"	F G	Teenkai
	6	33	H/c "		"	"
YYM (in diamond)	3	22	H/c "		F G	"
E S M (in heart)	5	28	H/c "		F G	"
SKT (in triangle)	6	24	H/c "		O F	
P D T (in heart)	5/6	52	H/c "			
		189				
M N YTE (YTE in triangle)	7	9	H/c Y. H.	ex SS. "Adana"	F G M	Moyune
H H T (in heart)	6	40	H/c "	"	Fine	Teenkai
T CKM (CKM in diamond)	6	28	H/c "		O Fine	Teenkai
HSM	5	28	H/c "	"	" "	"
M A C (M in diamond)	2	8	H/c Gunpdr.	"	G M	"
	4	15	H/c Y. H.	"		
Y L T (in heart)	4	6	H/c Impl.	"		
	6	40	H/c Y. H.	"	F G M	"
	7	21	H/c Hyson	"		
T F N (in triangle)	3	6	H/c Impl.	"	G M	"
	5	20	H/c Y. H.	"		
	6	37	H/c Y. H.	"		

100 Q. Now, I ask you whether you have made a careful examination of the teas shown on Exhibit 19; specimens of the actual teas? A. I have examined all these teas, sir, on this paper.

Q. When you say you have examined the teas, you mean you have examined samples of each of these teas? A. Yes, sir.

Q. How did you examine them? A. Weighed them up, put them in a cup, put boiling water on them, took a spoon and smelled them and also tasted them.

Q. Ordinary method of testing teas? A. Yes, sir.

Q. Did you find that any of these teas was impure, and if so, which of them? A. No, sir; none
101 of them were impure.

Q. Did you find that any of these teas were unwholesome? A. No, sir.

Q. Or unfit for consumption? A. No, sir.

Q. Or in any way improper as articles of food? A. No; I should not call them so, sir. I have used better teas than some of them, but I do not think any of them could be called impure or unfit for consumption.

Q. What can you say about the general character of these teas? A. I can tell you the character of each one of them.

Q. I wish you would? A. Good Teenkai, fine Fychow —

102 Q. Have you marked upon the paper which you hold in your hand your expert judgment as to each of these teas? A. I have.

Q. I see on this the words G M, or letters G M, &c.? A. That is good Teenkai; fine Teenkai. G M is good medium. Sometimes we leave the medium out.

Q. What is O G? A. On good medium.

Q. And the letter G stands for what? A. Good.

Q. F G M? A. Fully good medium.

Q. F G? A. Fully good.

Q. O F? A. On fine.

Q. Taking these teas as a whole, Mr. Gillet,

would it be proper to classify them as fine teas? A. 103
No, sir.

Q. What classification would you give them as a whole? A. That is a difficult thing to say, Mr. Bishop, because there are various grades there. I can make a guess at about what the average grade of them would be.

Q. You mean by that the average grade as shown by Exhibit 12? A. Yes, on that schedule there.

Q. Suppose I put this question to you: What is the range of the teas; I mean from what highest point down to what lowest point?

Q. (By the Court.) What is the standard of comparison; what do you call the best teas? A. Choice.

Q. Fine is not the best? A. No. 104

Q. The highest grade is called choice? A. Yes, sir.

Q. What is the lowest grade called? A. Well, common.

Q. From choice to common? A. Yes, sir.

Q. What are the intermediate grades? A. There would be choice, finest, fine, good medium. These would be the big grades, and then there would be in betweens. They are all on that schedule.

Q. Those are the grades of the better class of goods? A. Grades of all kinds. We haven't put choicest, because there were few of the choicest. I think it starts with finest.

Q. Would this be a fair statement of the different 105
grades: First, choicest; second, choice; third, finest; fourth, fine; fifth, fine Moyune, on fine Moyune, fully good medium, good medium, on good medium, fair Moyune, good common, good Moyune? A. That is absolutely fair, sir. I know the column straight across it shows equal grades.

Q. (By Mr. Bishop.) Explain that a little more fully to the Court? A. No. 1 is choicest Moyune, and No. 2 choice Moyune, and against that choicest Teenkai, and coming further down, fine and finest Teenkai would be fine Moyune, and coming to No. 11 good common Moyune, the equivalent of that

106 would be fair Teenkai, and fair Fychow of fine Wenchow. Reading across that way it gives teas of equal quality.

Q. Between what grades do these teas, which are the subject of this action, range? A. From "fine Teenkai" down to "on good Teenkai." In other words from 6 to 10 on that schedule.

Q. That is the numerals on the side of Exhibit 12, arranged from 6 to 10? A. Yes, sir.

CROSS-EXAMINATION BY MR. WHITNEY:

Q. What were the tests you applied in examining these teas, Mr. Gillet; how did you examine them
107 to find out what they were in your opinion? A. In examining those teas, in the first place, a certain weight is put into a cup which is determined by a scale, boiling water placed on this, and we have alongside of them standards to determine the grades.

Q. Where did you get those standards. A. The standards used in this case were the Government standards. After you have graded teas a number of years you have a sort of a concept in your mind of what the fine and finest is, and if there is any doubt you compare them.

Q. Where did you get the standards? A. Out of tin cans, one marked Season 1901-2, country green,
108 and another marked Season 1901-2, Ping Suey, and another one marked Current season for the other two grades for Ping Suey and country green; had four standards.

Q. And those were the Government standards? A. Yes, sir.

Q. Then the Government standard is a certain amount of tea and it is furnished to you in a tea can? A. We get it in lead cases.

Q. Where do you get it? A. From McGay, as a rule, I believe.

Q. He is the Government examiner of teas at the port of New York? A. Yes, sir.

Q. Every year the Secretary of the Treasury in establishing a standard of tea, has to provide an amount of tea great enough to enable the whole trade to be supplied with samples of it, and also sufficient amount to enable a considerable amount of it to be sent to China and Japan? A. It is not necessary to supply the whole trade, because most of the determinations as to quality would be done in this city, so that comparatively few people would have to have that standard. It is not necessary for the whole trade throughout the country to have it. It is necessary for China to have it, and China does have it. 109

Q. It is necessary to have it in considerable amounts for Philadelphia, Chicago and San Francisco? A. Yes. 110

Q. And some other points of this country? A. Yes, sir.

Q. And also in Japan, China or Ceylon, as the case might be? A. Yes, sir.

Q. Do you know how much tea the Secretary has to provide for every year for his standard sample of country green tea? A. I do not.

Q. It is a pretty considerable amount, isn't it? A. The board of tea experts can tell you that.

Q. They are the best authorities on how much has to be provided? A. They have to buy it.

Q. They have to go out in the market and buy a certain amount? A. It is selected by them. 111

Q. And in order that the Secretary should be able to establish a uniform standard that can be worked practically, he has to go into the market and buy a quite considerable amount of some one grade of tea, does he not? A. Yes, sir.

Q. And that considerable amount which he buys must be pure and wholesome and of the same grade and quality? A. Yes, sir; he gets one lot for each; he don't get two or three different lots of tea, but one lot of tea for one standard.

Q. But it has got to be a large enough lot to per-

112 mit of circulation over this country and China or Japan? A. Yes, sir.

Q. How did you examine the tea to ascertain whether it was say of the lower grade which you call common, or next to the lower grade which you call good common? A. Only personal experience in the tea business.

Q. What examination did you make of it? A. Smelled and tasted of it in the cup.

Q. You used, then, what is called the cup test? A. Yes, sir.

Q. The cup test is by pouring into two cups boiling water, and pouring a little tea of the kind you want to examine into one of these cups, and putting
113 a little tea of some standard into the other cup? A. Yes, sir.

Q. And then compare the two together to see whether one tastes and smells as good as the other? A. Yes, sir.

Q. That is what is called the cup test? A. Yes, sir.

Q. How long in the trade have they had that cup test? A. I can only tell you how long I have had it; thirty-two years; thirty-four years. It was not regarded as anything new when I came into the business.

Q. What other tests did you use beside this test of infusion in boiling water? A. No other test but
114 that.

Q. You didn't make any microscopical analysis? A. I did not.

Q. Or chemical analysis? A. I did not.

Q. And you considered the test of taste and smell sufficient for your purposes? A. I did.

Q. (By Mr. Bishop). How did the standard for 1901 compare with the standard for the year 1900, I mean the standard of these country green teas? A. The standard for 1901-2 was very much better than that for the present year.

Q. How about the standard for the present year? 115
A. Very much inferior to that of 1901-2.

Q. What can you say as to the strength and quality of these teas which you examined; I mean by that their tea qualities; tea strength? A. I should not think that any one of them was at all weak in any way, if that is what you mean.

Q. Was there anything to indicate the presence of exhausted leaf? A. Nothing whatever, sir.

HENRY C. THORN, being duly sworn on behalf of the plaintiff, testified as follows:

EXAMINED BY MR. BISHOP:

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Q. Where do reside, Mr. Thorn? A. Brooklyn.

Q. Your business? A. Tea broker.

Q. What is the firm? A. Henry C. Thorn.

Q. How long have you been engaged in business as a tea broker? A. 12 years; in the tea business 22.

Q. Are you familiar with the different grades and qualities of teas? A. I am.

Q. Are you familiar with the qualities of country green teas? A. I am.

Q. I show you this paper, Exhibit 12; is that a correct and accurate classification of country green teas according to their qualities, arranged in order from the highest to the lowest, the highest being 1 and the lowest 17? A. It is.

Q. Are you familiar with the standard No. 7 fixed 117
by the regulation of March 21st, 1901? A. I am.

Q. State what quality the standard No. 7 was according to this classification shown by Exhibit 12? A. I make it the finest Teenkai, which is No. 4 on that classification.

Q. (By the Court.) What do you mean by that? A. On that classification as they have it?

Q. Standard No. 7? A. Equal to that grading there of No. 4.

Q. That assumes, doesn't it, that No. 7, a package of No. 7 coming into this country, you assume it

was what it purported to be. Could you tell the tea inside of that package was No. 7? A. Without examining it?

Q. Yes. A. No; nobody could. That is, if I understand your question.

Q. (By Mr. Bishop.) Now, if standard No. 7 were in force, would that exclude all the classes of teas from No. 5 down to No. 14 on that schedule? A. Yes, sir, it would exclude everything poorer than that.

Q. And would standard No. 7, if in force, exclude all Fychow and Wenchow teas? A. Yes.

Q. Are there Fychow and Wenchow teas which have been ordinary subjects of commerce and which are wholesome and suitable for consumption? A. There are a great many of them.

Q. How does the standard for country green teas No. 7, adopted by regulation of March 21, 1901, compare in quality with the standard for Ping Suey teas for the same year? A. For the same year?

Q. Yes. A. The standard No. 7 is very much higher than the Ping Suey standard.

Q. Have you examined the teas shown by schedules 3, 6, 7 and 8 which correspond with the teas shown on schedule which I now hand you? A. Yes, sir; I have examined them all.

Paper offered in evidence and taken subject to correction and marked Exhibit 20.

Exhibit No. 20.

Y Y X (in heart)	6	48	H/c Y. H.	ex SS. "Glengyle"	Fully Good T.
DYF (in diamond)	7	51	H/c Y. H.	"	
	8	23	H/c Hysons	"	Fine Fychow
W B T (in crescent)	28	29	H/c Y. H.	"	Good T.
	29	19	H/c Hyson	"	
SHM (in diamond)	4	32	H/c Y. H.	"	Fine Fychow

J (in diamond)	4	40/H/c	Y. H.	"	
A K (K in heart)	1	50	H/c Y. H.	"	Fully Good T.
L (in circle)	1	38	H/c Y. H.	"	
T T C (in heart)	5/6	50	H/c Y. H.	"	Good Moyune
	7	19	H/c Hyson	"	
T H T (in heart)	5	23	H/c Y. H.	"	do. T.
YLM (in diamond)	6	18	H/c Hysons	"	do. Moyune
A (in heart)	1/2	62	H/c Y. H.	ex SS. "Ataka"	
B (in diamond)	1	28	H/c Y. H.	"	
C (in triangle)	1	23	H/c Y. H.	"	
D (in square)	1	40	H/c Y. H.	"	
E (in star)	1	26	H/c Y. H.	"	Same as J
F (in circle)	1	37	H/c Y. H.	"	Fully good T.
GG (in double diamond)	1	33	H/c Y. H.	"	
HH (in double heart)	1	24	H/c Y. H.	"	
II (in double triangle)	1/2	66	H/c Y. H.	"	
JJ (in double circle)	1	47	H/c Y. H.	"	
K (in heart)	1	43	H/c Y. H.	"	
W B M (in crescent)	13	16	H/c Hyson	"	Good T.
SF (in triangle)	5/6	24	H/c Y. H.	"	do. Moyune
MM (in diamond)	6	52	H/c Y. H.	"	do. T.
A Q C (in triangle)	6	33	H/c Y. H.	"	
	7	36	H/c Y. H.	"	Fine T.
	8	15	H/c Hyson	"	
YTT (in square)	4	36	H/c Y. H.	ex SS. "Glengyle"	Finest Fychow
T T H (in triangle)	1	8	Cas. Gunpdr.	"	
	2	13	Cas. Gunpdr.	"	Fine Fychow.
	4	44	H/c Y. H.	"	

124	K H T (in heart)	4	47	H/c	Y. H.	"	Good T.
	K H M (in heart)	1	10	Cas.	Gunpdr. ex SS. " Ataka "		
		2	25	H/c	Gunpdr.	"	
		3	12	H/c	Impl.	"	Fine Fychow
		4	10	Cas.	F. Mec	"	
		5	30	H/c	Y. H.	"	
			87				
	M N YTE (YTE in triangle)	7	9	H/c	Y. H. ex SS. " Adana "		Fine Moyune
	H H T (in heart)	6	40	H/c	"	"	do. T.
125	T CKM (CKM in diamond)	6	28	H/c	"	"	do. do.
	HSM	5	28	H/c	"	"	do. do.
	M A C (M in diamond)	2	8	H/c	Gunpdr.	"	Good T.
		4	15	H/c	Y. H.	"	do. do.
	Y L T (in heart)	4	6	H/c	Impl.	"	Fine T.
		6	40	H/c	Y. H.	"	do. do.
		7	21	H/c	Hyson	"	do. do.
	T F N (in triangle)	3	6	H/c	Impl.	"	Good T.
		5	20	H/c	Y. H.	"	do. do.
		6	37	H/c	Y. H.	"	do. do.
126	Y T T Y (in cross)	5	30	H/c	Y. H. ex SS. " Satsuma "		F. T.
		6	33	H/c	"		do.
	YYM (in diamond)	3	22	H/c	"		F. T.
	E S M (in heart)	5	28	H/c	"		Fully Good T.
	SKT (in triangle)	6	24	H/c	"		do.
	P D T (in heart)	5/6	52	H/c	"		On Good T.
			189				

Q. This is the schedule which shows the teas which 127
you examined, Exhibit 20? A. Yes, sir.

Q. You examined a sample of each of these lots? A. Every one; I put how I made them there on the right-hand side.

Q. Did you mark against each of the lots upon your list, Exhibit 20, the quality of the teas as you found them? A. I wrote the character that I made it and quality.

Q. State whether you found those teas to be more deleterious to health than other kinds of teas? A. Not in the slightest.

Q. Were they pure and free from adulteration? A. Absolutely.

Q. Were they genuine and free from spurious and 128
exhausted leaves? A. They were.

Q. Was there anything in any of these teas that indicated or suggested that they were presumably impure, unwholesome or unfit for consumption? A. There was not.

Q. How did they compare in quality with the Ping Suey standard established in 1901? A. All very much better.

Q. What was the range of the qualities of the teas shown on Exhibits 3, 6, 7 and 8 and your Exhibit 20, according to the classification on the Exhibit No. 12 that you have in your hand; running from what number to what number? A. I think I went down to 9, running from 6 to 9. I did not make anything 129
lower than a fine Fychow. I graded them from 6 to 9 on this.

Q. You graded them all from what classification; just call off? A. I graded them from fine Moyune, fully good medium Moyune, good Moyune, fine Teenkai, good Teenkai, good medium Teenkai and fine Fychow.

Q. Have the articles classified upon Exhibit 12 from 5 down to 14, been heretofore ordinary articles of commerce? A. Always.

Q. Were they largely dealt in previous to 1901? A. They were.

180 Q. Were you familiar with all the standards fixed by the Secretary of the Treasury on March 21, 1901? A. I was.

Q. Was each of those standards uniform with the other standards in quality as shown by taste and flavor? A. In my opinion they were not.

CROSS-EXAMINATION BY MR. WHITNEY:

Q. Mr. Thorn, how did you make this examination to find out whether those teas were wholesome? A. Simply by smelling and tasting.

Q. Are you a physician? A. No, I am not.

Q. You did not make any microscopic examination? A. Of what?

131 Q. Of any of these teas? A. I have never made any examination in that way of teas in my life.

Q. And you did not make any chemical analysis? A. No, I did not?

Q. A package, as referred to by Mr. Bishop, I suppose, is the same thing as what is called a half chest, isn't it? A. Well, half chest or box, original package coming from China or Japan.

Q. It is called a half chest? A. Some call it half chest and some boxes, depending on the size of the package and the district it comes from.

Q. Is the quality of the tea always uniform in the same box? A. It is supposed to be, yes.

Q. What is a chop? A. Well, it is several lines
132 of different grades all put in together.

Q. In each importation of tea of say fine Teenkai tea, there is usually a variety of qualities of fine Teenkai tea, is there not? A. No, I don't agree with you in regard to qualities. There is a difference in valuation.

Q. Why do different portions of the same chop differ in valuation? A. Because they are made up from teas of the very large leaf and the lower valued leaf, up to a very small leaf that makes the best teas.

Q. You call them the same quality? Q. They are supposed to be, as near as you can get.

Q. Nevertheless, some are more valuable than 133
others? A. Certainly.

Q. That is because they taste better? A. Not necessarily.

Q. Because they are stronger? A. I would hardly put it in that way.

Q. What is a gunpowder tea? A. It is a very small, rolled tea.

Q. The gunpowder tea is made from smaller leaves, or cut from the top of the tea plant? A. That is what I understand. You will have to ask somebody that knows more about China than I do.

Q. A chop of fine Teenkai tea would presumably have some gunpowder in it? A. Oh, yes.

Q. And in March, 1901, about how much would 134
that have been worth? A. That I could not tell you without getting my book; that was because there is a very large range in value. Gunpowder teas of a Teenkai chop might be worth 22 cents and might be worth 65, depending entirely on what kind of gunpowder tea it was.

Q. The same chop would have some Hyson tea in it, too? A. Probably.

Q. What is a Hyson tea? A. Depends on what the Hyson is. Sometimes a Hyson is a very valuable tea, not as high priced as some of the others.

Q. When the same chop has some gunpowder and some Hyson, the Hyson is very much inferior to the gunpowder? A. Not always. Usually, but once in 135
a while we get a very fine Hyson tea and a very poor gunpowder in the same chop.

Q. It is common for a gunpowder tea to be worth three times as much as Hyson? A. No; if you take an extra gunpowder it would be, but take a third gunpowder it would be worth very little more than the Hyson.

Q. Sometimes the Hyson would be worth 10 cents and the gunpowder might be worth about 30 cents? A. That could happen.

Q. In your statement here of Mr. Buttfield's teas, stating that they were fine Teenkai, or fine Fychow,

136 or whatever they might be, have you got it stated there how much of it was gunpowder and how much of it was Hyson? A. No; I simply looked at the samples, and did not go into the grading; put down the characteristics of the teas.

Q. You call a difference between gunpowder and Hyson not a difference of quality but difference of grading? A. As much that as anything.

Q. And there are intermediate grades between the two, are there not? A. If you want to go into a chop of green teas there is usually 8 or 10 lines of different values. There are two or three gunpowders, five or six imperials, sometimes one and sometimes two Hysons, and it is impossible to say that it is between
137 this and that.

Q. Now, it is a fact, isn't it, that a Hyson of the fine Teenkai tea may not be any better than the gunpowder of a good medium Teenkai, or an "on good Teenkai" tea? A. That might be.

Q. So that we don't know when we are simply told that a certain lot of tea was fine Teenkai tea, whether it was very valuable tea or not; we have to find out further whether it was a gunpowder or a Hyson, don't we? A. Not as I understand it; when you are looking at teas in regard to the United States standard, that has nothing to do with the value or style. It is the cup quality, and that is what I looked into.

188 Q. And the cup quality of a gunpowder of No. 9 or 10 on this schedule of yours, may be just as good as the cup quality of a Hyson of No. 6? A. No, sir; that is not true.

Q. How would you correct that statement? A. Only in this way, that No. 9 a good medium Teenkai or good medium Moyune, I did not make equal to a fine Teenkai tea No. 6. I think you put it a little too strong.

Q. You would make a difference of about two grades instead of three? A. No; I think these grades here are accurate.

Q. I mean as comparing the Hyson of the higher

grade with the gunpowder of the lower grade? A. 139
I should think that would be about it, three to four grades.

Q. Three or four grades? A. Three or four grades.

Q. Then if you took for the standard the Hyson of a fine Teenkai—a low Hyson of a fine Teenkai—that standard would let into the United States a large amount of tea of grades which you have placed lower here on your schedule? A. It would not let them in on cup quality. You want to know the difference in valuation.

Q. I am talking about the cup quality. A. The cup quality of fine Teenkai would not let in any Fychow, or good Teenkai.

Q. But the cup quality of a low grade of Hyson 140
of a fine Teenkai would let in the better grade of the good medium Teenkai, wouldn't they? A. It might possibly, because a better grade might draw better than the average of that chop.

Q. Did you have occasion in your business, when these standards were announced in March, 1901, to look at the standard of country green and see what it was? A. I did.

Q. What did you judge it to be when you looked at it then? A. I made it a very fancy Teenkai tea.

Q. You made it a fancy Teenkai tea? A. I did.

Q. I don't find that on your list? A. I make it here finest.

Q. You make it grade 4, finest? A. Yes, sir. 141

Q. Mr. Bishop seemed to be advised it was grade 5? A. I graded it 4.

Q. By what operation did you come to the conclusion that it was finest Teenkai? A. Simply smelling and tasting it.

Q. In an infusion in a cup of boiling water? A. Yes, sir; the regulation way; the only way.

Q. That is the ordinary cup test? A. That is the regular way.

Q. That is the cup test not only under this act, but it has been used for 40 years in the tea trade?

142 A. Ever since I have been in the tea trade they have used cups.

Q. Now, don't you know it was a Hyson which was adopted as a standard; you noticed that? A. Yes, certainly I did.

Q. And don't you know that was only worth at that time 10½ cents in the market? A. I don't remember the value of it.

Q. That was about what it was worth, wasn't it? A. That I could not say without looking up the record. I should imagine the tea was worth more than that, although it might have been, at that time, on account of the cup quality.

Q. And there were gunpowders of the same grade
143 as Teenkai tea, worth 30 cents a pound at that time? A. I presume there were.

Q. There is a regular season for buying tea, isn't there? A. You mean in China?

Q. Yes. A. Yes.

Q. When is the season? A. It starts in China about the latter part of May for green teas—no, I guess it starts the latter part of June.

Q. How long does it last? A. As long as there is any stuff there to buy.

Q. How long is the season, usually? A. It isn't quite closed yet this season. Some years they carry over stock until the next year.

Q. Usually it runs four or five months the long-
144 est? A. I should say it runs always six months. I may be mistaken in regard to the date of the opening.

Q. These standards are announced by the Secretary of the Treasury in March, so that the people can get them and send them to China or Japan for use in buying over there? A. That is the idea.

Q. And those teas that are bought over there by comparison with the standards in China or Japan are then imported here in the following winter, are they not? A. Oh, no; tea might be bought there the latter part of June and shipped and landed here in this country in August. It is only thirty days.

Q. It is imported from August to the end of the importing season? A. Yes, sir. 145

Q. And the following year the Secretary adopts new standards? A. Yes, sir.

Q. Now, during the time between the adoption of the standard and the average date of the importation of the teas, the tea adopted as the standard is expected to deteriorate somewhat, is it not? A. Depends on the tea entirely that they select.

Q. But that is usually so, that the standard that one would select, of tea, or any box of tea one would select, would in the course of the following year deteriorate somewhat? A. Suppose they selected a tea that is already a year old and has deteriorated all it is going to. 146

Q. Suppose they would select a standard of fresh tea? A. There would be a certain amount of deterioration.

Q. It would go down, if it was finest Teenkai, it would go down to fine Teenkai, wouldn't it? A. No, if it is finest Teenkai once it will always be finest Teenkai.

Q. It will be no better in cup quality than a new Teenkai next year? A. The finest Teenkai tea does not go off much, or a fine Teenkai.

Q. Do fine Teenkais go off? A. Not to any great extent; a low grade tea does.

Q. They all deteriorate somewhat? A. Yes.

Q. So some allowance has to be made for that? 147
A. There ought to be.

Q. Now, when the Secretary selects tea he has got to select a sufficient amount of tea of the same quality to enable it to be distributed to the various parts of this country and China and Japan? A. That is the idea.

Q. Therefore, he cannot get tea that is only represented by a few pounds in the market, but tea of which he can find a number of half chests in the market of uniform quality? A. Certainly, but he does not buy them.

Q. Do you know how much was necessary, in

148 1901, of the country green teas, or how much is considered necessary to obtain a uniform quality? A. No; but I know for two years I have not bought any of it for them. Up to that time every year I would buy one or two lots in small lots. I do not think I have bought over five packages in any one line and that is a small lot of tea.

Q. You have to get from five to ten packages at any rate? A. They may get ten, but even that is a small quantity.

Q. I suppose everybody in the trade knew, immediately after the selection of these standards, what grade they were, did they not? A. I suppose those interested who looked into it.

149 Q. So that those samples on being sent out to China, would apprise everybody in China that the Government, would not, during the following year, admit tea of a lower grade and quality than a Hyson of finest or fine Teenkai, whichever the standard may have been? A. No, sir; it is not a case of Hyson. They would not admit anything of a lower cup quality than that standard.

Q. Which standard happened to be a Hyson? A. Happened to be a Hyson tea.

REDIRECT-EXAMINATION BY MR. BISHOP:

Q. When you speak of grades of tea like gunpowder and Hyson and other such designations re-
150 ferred to by Mr. Whitney, are those names generally used in the tea trade to indicate the style and appearance of the tea? A. Certainly; that is what they are for.

Q. They have no reference to the cup quality of the tea, have they? A. Not in the slightest.

Q. A gunpowder tea is a tea – describe it? A. A gunpowder in a country green tea is a very small, round tea; the leaf is rolled and it is made out of the small leaf and there is three or four different styles, some made out of larger leaves, and the smaller they are the more they bring, and they bring it on account of the style of tea.

Q. That does not indicate it is any superior kind 151
of tea or quality of tea? A. Not the slightest.

Q. Simply it is secured from a more delicate leaf and rolled? A. Taken more manipulation and more time to make it.

Q. When you speak about the price of these teas and the price of the finest Teenkai, you refer to the teas in bond, do you? A. Well, yes, either in bond or out of bond.

Q. When the price is spoken of as being 10 cents or thereabouts? A. That is in bond.

Q. So when you speak of the price of the gunpowder tea being possibly 30 cents or some of the finest Teenkai, that is in bond? A. That is in bond.

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RECROSS-EXAMINATION BY MR. WHITNEY:

Q. If there is not any difference in cup quality, why would the gunpowder of the same chop of tea be worth say 30 cents and the Hyson worth 10 cents? A. I could answer that by asking a question, which I don't suppose would be correct.

Q. I would rather have a direct answer. Tell me your answer? A. It is a question that I think any tea man thoroughly understands, and I don't know as I can explain it thoroughly so that the gentlemen will understand it.

Q. Will you explain it? (Question read.) A. In the first place, I do not admit that the Hyson is only worth 10 against the gunpowder 30 in any 153
special chop. Going on the supposition that that is so, tea is handled like any other article of merchandise, and the appearance of the gunpowder is much better than the appearance of the Hyson, and that alone makes them much more valuable. Tea is only merchandise in the way it is handled and sold, and the appearance has a great deal to do with it, but it is sold at a valuation.

Q. Is not the taste of a gunpowder tea better than the taste of Hyson of the same chop? A. It might be and might not. You might get a fancy Hyson and poor gunpowder in the same chop.

154 Q. Don't you expect it to be? A. Naturally you expect it to be. At the same time I have seen a good many chops of tea where they had a better drawing Hyson in it than gunpowder.

Q. Ordinarily the gunpowder is much better than Hyson? A. Ordinarily the gunpowder brings more money than the Hyson.

Q. Tastes better? A. I don't know as it does.

Q. You had just as leave drink a Hyson as a gunpowder? A. I had as soon drink a fine Hyson as an ordinary gunpowder tea.

Q. Suppose you were buying a fine gunpowder tea, would you rather drink the gunpowder of it than the Hyson? A. Certainly I would if I was
155 buying the finest out of the chop.

Q. That is about the way a chop will come, isn't it (showing paper)? A. Yes, that is an ordinary chop of green tea.

Q. There is nothing out of the way in the sample I show you of valuations of the teas in a chop of green tea? A. Well, one chop of green tea does not make a standard for all chops of green tea.

Q. There is nothing unusual in it? A. No, there is nothing unusual in it.

Q. I have shown you a chop of importation of Moyune tea where 7 cases of gunpowder in the chop were worth 23 cents, and they run down through nine grades until the Hyson is worth 7½. Now,
156 there is nothing unusual in that? A. No, those are about the usual valuations.

Q. Then, isn't it important in ascertaining what was the real nature of a standard of tea selected by the Secretary of the Treasury to find out whether he selected a Hyson or gunpowder? A. No; he might have taken a fancy gunpowder off a chop that would not have the cup quality of this standard he selected.

Q. (By Mr. Bishop.) The tests which you used, were they the same as employed by the tea examiner in examining these—I mean this test by an in-

fused leaf with water? A. I suppose he examines 157
teas in that way.

Q. Do you know how the tea examiner tests the tea? A. I have never had the pleasure of being over there.

Q. (By Mr. Whitney.) There is no distinction between the way the tea examiner tests tea and the way anybody else tests tea? A. I have never been over there, but I understand over there they often draw double weight.

Q. They draw tea and have a standard and put a little tea from the standard in one cup and the other tea in another cup, pour boiling water on them and taste of them? A. I presume he tests them the same way as we do, with the exception, I under- 158
stand, they use double weight, which, of course, we do not use.

Q. (By Mr. Bishop.) In moistening the tea in that way and after the tea has been steamed in hot water, impurities, &c., are easily detected, are they not? A. Why, certainly. If there is anything impure in the tea it will show right out.

Q. And then after the tea has spread itself in the water you examine the tea leaf itself, do you? A. In taking the leaf up on a spoon to smell of it we naturally see the leaf, and if there is anything impure, any adulterated leaves, it would naturally show out.

The Court: It seems to me it is undoubtedly a 159
question of law upon this record, and I think that you, Mr. Bishop, have already sufficient evidence to warrant a direction of a verdict in your favor, provided you are correct upon the law question; that is, that this act is unconstitutional, and if it be constitutional and the Secretary has improperly excluded the teas, and if it is to be construed as you contend it is, then you have made a case. Otherwise you have not. Therefore it does not strike me as at all material to multiply the expert testimony. We want to get this record so that the question will be finally determined by the Supreme Court. I want

160 it perfectly clear that the plaintiff has made a case upon the facts, provided the law is with him.

Counsel for the defendant stipulates that Mr. Joseph H. Lester's evidence will be substantially similar to that already given by the witnesses, Gillet and Thorn.

A similar stipulation is made with reference to the testimony of Mr. William H. Decker, called for the plaintiff.

WILLIAM J. BUTTFIELD, RECALLED AND EXAMINED BY MR. BISHOP:

Q. Mr. Buttfield, you testified what the difference between what the teas were, the value of the teas in
161 New York at the time of the rejection, and what they realized, was $2,281.19. Was the amount realized, $2,281.19, less than the value of the teas at New York at the time of the rejection? A. It was.

Q. Can you state about what the annual importation of teas into the United States is? A. The average importation into the United States is approximately 90,000,000 pounds.

Q. What is the annual importation into the United States of country green teas? A. The average annual importation of country green teas is from six to eight million pounds.

Q. (By the Court.) Do you mean now? A. It has been in the past. I am taking now a period of say
162 ten years.

Q. During this particular time? A. It was very much less during that particular time.

Q. (By M. Bishop.) If the standard fixed by the regulations of March 21, 1901, for country green teas was enforced, what proportion of country green teas would be excluded? A. Two-thirds of the total crop of country green teas would be excluded under that standard of 1901.

CROSS-EXAMINTION BY MR. WHITNEY:

Q. When this standard was promulgated in March, 1901, you examined it, I suppose, to see

what it was? A. When we received the sample, 163
yes.

Q. You went and got a sample, didn't you, at once? A. Yes.

Q. And you found it to be a Hyson of a fine Teenkai tea, did you not? A. We found it to be a Hyson of the finest Teenkai tea.

Q. Of the finest Teenkai tea? A. Of the finest Teenkai tea,

Q. You have put it on your statement here, the finest No. 4, and you have drawn a line under No. 5? A. That is for the reason that the standard of the current season would admit probably one grade lower of the new season.

Q. On account of deterioration? A. Of the slight 164
deterioration that occurs.

Q. You have rated it, however, a Hyson of the finest Teenkai tea, then? A. That is correct.

Q. And don't you know that that lot was worth about 10½ cents a pound at that time and was bought at that rate by the Government? A. I do not know it, sir.

Q. It is true it was worth about 10½ cents a pound in bond? A. I cannot recall what the value of that tea was at that time, but for the past year the value of similar teas has been in the neighborhood——

Q. No matter about the past year; I am speaking about March, 1901? A. I cannot recall the exact market value at that time.

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Q. Now, you sent out samples to China, as all the other importers did, with the knowledge that no tea inferior in cup quality to that standard would be permitted to be imported into the United States if the law was observed and it was constitutional? A. We did.

Q. (By Mr. Bishop.) Can you tell by reference to this paper or otherwise the value of the teas which were rejected, which are the subject of this suit, at the time of their rejection; that was about a year after the standard was fixed; the range of them?

166 A. The value of the teas in the New York market at the time of the rejection——

Q. What was the range in prices? A. Ranged from 12½ cents in bond to 26 cents in bond.

[PLAINTIFF RESTS.]

Mr. Whitney: I move for the direction of a verdict for the defendant on the ground, in the first place, that the act is constitutional and that it is for the Secretary to decide as to the standard which is to be adopted, which decision cannot be reviewed by
167 this Court in this action. And that there is no sufficient evidence that the Secretary of the Treasury has acted in any way improperly.

Also on the ground that assuming the act to be unconstitutional, or if it were assumed that the Secretary had acted improperly in the matter, no cause of action in tort is established against Mr. George R. Bidwell. There is no fact proved showing a conversion of the tea by him, or in any other way making him liable in such an action.

On both grounds I move for the direction of a verdict for the defendant.

The Court: The question has to be passed upon by the Supreme Court, and it can be passed upon now
168 in a more satisfactory way than to have the defendant go into his evidence in this case. You have a perfectly clear case now to present all of these questions.

Mr. Bishop: I would like to make sure that I have got my constitutional questions presented.

The Court: Move for the direction of a verdict.

Mr. Bishop: The plaintiff requests the Court to direct a verdict in favor of the plaintiff for damages proved upon the grounds:

FIRST.—That the action of the Secretary of the Treasury in fixing and establishing the standard No.

7 for country green teas by regulation promulgated March 21, 1901, was void and of no effect, and afforded no justification to the defendant in excluding the plaintiff's teas from import, because said act of the Secretary was an attempted exercise of legislative power to regulate commerce, which power, by the Constitution of the United States, is conferred upon Congress alone and cannot be delegated by it. 169

SECOND.—That the act of March 2, 1897, entitled "An Act to prevent the importation of impure and unwholsome tea," in so far as it authorized the Secretary of the Treasury to determine what teas could be imported into the United States by citizens thereof, is unconstitutional and void, because such power can be exercised only by Congress, and cannot be delegated by it to any other person or body. 170

THIRD.—That since the evidence shows that the teas offered by the plaintiff for import were genuine, pure and wholesome, free from adulteration, fraud and deception and fit for consumption, and had heretofore been and now are ordinary subjects of commerce, the act of the Secretary of the Treasury in fixing and establishing a standard by regulation dated March 21, 1901, which excluded said teas from import, was unlawful, and the act of March 2, 1897, in so far as it authorized the fixing and establishing of such standards by said Secretary, was in contravention of the Constitution of the United States, as depriving the plaintiff of his property and liberty without due process of law, and the said action of the Secretary of the Treasury afforded no justification to the defendant in rejecting said teas from import. 171

FOURTH.—That Congress has no authority under the Constitution of the United States to pass a law restraining the plaintiff, a citizen of the United States, from importing, selling or dealing in teas

172 which are ordinary subjects of commerce and which are not injurious to the public health, morals or welfare, and the act of March 2, 1897, in so far as it does prevent the plaintiff from importing, selling or dealing in such teas, is unconstitutional and void as depriving the plaintiff of his property and liberty without due process of law, and affords no justification to the defendant in excluding such of the plaintiff's teas in controversy as were ordinary subjects of commerce and were not injurious to the public health, morals or welfare.

FIFTH.—That Congress cannot lawfully enact a law preventing a citizen of the United States from
173 dealing in a wholesome article of food, unless the restraint imposed upon the citizen has some tendency to protect the public health, morals or welfare, and that the act of March 2, 1897, so far as the same authorized the Secretary of the Treasury to exclude teas merely on the ground of quality, based on taste and flavor, having no relation to nor indicative of anything deleterious or injurious to the health or prejudicial to the public welfare, is unconstitutional and void as being an encroachment, unauthorized by the Constitution, on the liberty of a citizen, and that the said act and the regulations adopted thereunder affords no protection to the defendant in rejecting the plaintiff's teas, upon the
174 ground of quality, based on taste and flavor, having no relation to nor indicative of anything deleterious or injurious to the health or prejudicial to the public welfare.

Now, I ask the Court to direct a verdict in favor of the plaintiff on the ground that it appears that the Secretary of the Treasury established the standard in question which excluded teas which were not of the lowest grade, neither demonstrably of inferior purity or unfit for consumption, or presumably or possibly so, because of their inferior quality; and that the teas offered for import as shown by plaintiff's witnesses, were not of the

lowest grade of tea, were not demonstrably of in- 175
ferior purity or unfit for consumption, or presumably or possibly so because of their inferior quality.

The Court: I think that covers every possible question in the case. The motion to direct a verdict for the plaintiff is denied.

Exception taken by counsel for the plaintiff.

The Court: The motion made by the defendant for the direction of a verdict is granted.

Exception taken by counsel for the plaintiff.

The Court: Gentlemen of the Jury: There is no question of fact in this case, and the law of the case 176
has already been determined, so far as this Court is concerned, adversely to the contention of the plaintiff. Under these circumstances there is nothing for the Court to do now but direct you to find a verdict in favor of the defendant.

The jury rendered a verdict in favor of the defendant.

Inasmuch as the proceedings, evidence, objections, instructions, rulings and exceptions contained in the foregoing bill do not appear on record in this cause, I, ALFRED C. COXE, a Judge of said Court, who presided at the trial of said cause, after due notice being given to the defendant in said cause, 177
have settled and signed said bill of exceptions and ordered that the same be made a part of the record in this cause this 3d day of March, 1903.

ALFRED C. COXE,
U. S. Circuit Judge.

Approved in form.
EDWARD B. WHITNEY,
Of Counsel for Defendant.

(Endorsed)—U. S. Circuit Court.—Filed April 27, 1903.—Southern District of New York.—John A. Shields, Clerk.

78 Supreme Court of the United States.

WILLIAM J. BUTTFIELD, Appellant,
against
GEORGE R. BIDWELL, Appellee.
} Assignments of Error on Appeal.

And now on this 23d day of December, 1902, comes the appellant William J. Buttfield, by James L. Bishop, Esquire, his attorney, and says that in the record and proceedings in the above entitled matter there is manifest error in this, to wit:

First. That the court erred in denying the motion made by the appellant to strike out the words "You can make such an offer, of course, to the collector to pay certain moneys, but we should not pass the withdrawal" in answer to the question "an offer to pay duty under such circumstances would be useless," in the testimony of John W. Ridsdale, appearing on page — of the transcript of the record.

Second. That the court erred in denying the motion made by the appellant herein, for the direction of a verdict in his favor for damages proved, for the reason that the action of the Secretary of the Treasury in fixing and establishing the standard No. 7 for country green teas by regulation promulgated March 21st, 1901, was void and of no effect, and afforded no justification to the defendant in excluding the plaintiff's teas from import, because said act of the

79 Secretary was an attempted exercise of legislative power to regulate commerce, which power by the Constitution of the United States, is conferred upon Congress alone and cannot be delegated by it.

Third. That the court erred in denying the motion made by the appellant herein, for the direction of a verdict in his favor for damages proved, for the reason, that the act of March 2d, 1897, entitled "An act to prevent the importation of impure and unwholesome tea" in so far as it authorized the Secretary of the Treasury to determine what teas could be imported into the United States by citizens thereof, is unconstitutional and void because such power can be exercised only by Congress, and cannot be delegated by it to any other person or body.

Fourth. That the court erred in denying the motion made by the appellant herein, for the direction of a verdict in his favor, for damages proved for the reason that, since the evidence shows that the teas offered by the plaintiff for import were genuine, pure and wholesome, free from adulteration, fraud and deception, and fit for consumption, and had heretofore been and now are ordinary subjects of commerce, the act of the Secretary of the Treasury in fixing and establishing a standard by regulation dated March 21st 1901, which excluded said teas from import, was unlawful, and the act of March 2d, 1897, in so far as it authorized the fixing and establishing of such standards by said Secretary, was in contravention of the Constitution of the United States, as depriving the plaintiff of his prop-

erty and liberty without due process of law, and the said
80 action of the Secretary of the Treasury afforded no justification to the defendant in rejecting said teas from import.

Fifth. That the court erred in denying the motion made by the appellant herein, for the direction of a verdict in his favor, for damages proved for the reason that Congress has no authority under the Constitution of the United States to pass a law restraining the plaintiff, a citizen of the United States, from importing, selling, or dealing in teas which are ordinary subjects of commerce and which are not injurious to the public health, morals or welfare, and the act of March 2d, 1897, in so far as it does prevent the plaintiff from importing, selling or dealing in such teas, is unconstitutional and void as depriving the plaintiff of his property and liberty, without due process of law, and affords no justification to the defendant in excluding such of the plaintiff's teas in controversy as were ordinary subjects of commerce and were not injurious to the public health, morals or welfare.

Sixth. That the court erred in denying the motion made by the appellant herein for the direction of a verdict in his favor, for damages proved for the reason that Congress cannot lawfully enact a law preventing a citizen of the United States from dealing in a wholesome article of food, unless the restraint imposed upon the citizen has some tendency to protect the public health, morals or welfare, and that the act of March 2d, 1897, so far as the same authorized the Secretary of the Treasury to exclude teas
81 merely on the ground of quality, based on taste and flavor, having no relation to nor indicative of anything deleterious or injurious to the health or prejudicial to the public welfare, is unconstitutional and void as being an encroachment, unauthorized by the Constitution, on the liberty of a citizen, and that the said act and the regulations adopted thereunder affords no protection to the defendant in rejecting the plaintiff's teas upon the ground of quality, based on taste and flavor, having no relation to nor indicative of anything deleterious or injurious to the health or prejudicial to the public welfare.

Seventh. That the court erred in denying the motion made by the appellant herein for the direction of a verdict in his favor for damages proved for the reason that it appears from the testimony introduced by the plaintiff that the Secretary of the Treasury established the standard in question, which excluded teas which were not of the lowest grade, neither demonstrably of inferior purity or unfit for consumption, or presumably or possibly so, because of their inferior quality; and that the teas offered for import, as shown by the plaintiff's witnesses, were not of the lowest grade of tea, were not demonstrably of inferior purity or unfit for consumption, or presumably or possibly so because of their inferior quality.

Eighth. That the court erred in granting the motion made by the appellee herein for the direction of a verdict in his favor.

Wherefore the said appellant prays that the judgment en-
82 tered herein in the circuit court of the United States for the southern district of New York, be reversed and that the said

circuit court of the United States for the southern district of New York be ordered to enter judgment for the plaintiff herein for the damages proved upon the trial of the action.

JAMES L. BISHOP,
Attorney for Appellant, 135 Broadway, Borough of Manhattan, New York City.

(Endorsed:) Supreme Court of the U. S.—William J. Buttfield, appellant, against George R. Bidwell, appellee.—Assignment of error.—James L. Bishop, attorney for appellant, No. 135 Broadway, New York city.—U. S. circuit court, southern district of New York, Filed Dec. 23, 1903, John A. Shields, clerk.

83 Circuit Court of the United States for the Southern District of New York.

WILLIAM J. BUTTFIELD
vs.
GEORGE R. BIDWELL. } Bond for Damages and Costs.

Know all men by these presents, that the Fidelity and Casualty Company of New York, a corporation duly organized and existing under the laws of the State of New York, with the principal office at No. 97 Cedar street, in the city, county and State of New York, is held and firmly bound unto the above named, George R. Bidwell, in the sum of two hundred and fifty dollars ($250.00) to be paid to the said George R. Bidwell, for the payment of which, well and truly to be made, it binds itself, its successors and assigns, jointly and severally, firmly by these presents.

Sealed with its seals, and dated this twentieth day of March, one thousand nine hundred and three.

Whereas, the above named, William J. Buttfield has prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment of the circuit court of the United States for the southern district of New York, rendered in the above entitled suit.

Now, therefore, the condition of this obligation is such that if the above named, William J. Buttfield, shall prosecute said writ of error to effect, and answer all damages and costs, if he shall fail to
84 make his plea good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

THE FIDELITY & CASUALTY CO. OF NEW YORK,
[SEAL.] By EDW. C. LUNT, *3rd Ass't Sec'y.*

Form of Justification.

The Fidelity and Casualty Company of New York, surety, 97–103 Cedar street, New York city.

STATE OF NEW YORK, *City and County of New York,* } ss.:

On this twentieth day of March, 1903, personally appeared before me Edward C. Lunt, known to me to be the third assistant secretary of the Fidelity and Casualty Company of New York, who, being by me duly sworn, deposes and says that he resides in New York city, State of New York, that he is the third assistant secretary of the said The Fidelity and Casualty Company of New York and knows the corporate seal thereof; that the said company is duly and legally incorporated under the laws of the State of New York; that said company has complied and is now complying with the provisions of the act of Congress of August 13, 1894, allowing certain corporations to be accepted as surety on bonds; and he further deposes and says that the following is a true copy of an extract from article III. of the by-laws of said company, whereby is shown the power vested in the president:—

"It shall be the duty of the president, or vice-president, to preside at the meetings of the board of directors, and to perform
85 whatever belongs to the executive department of the board. He may make insurances and all other contracts on behalf of the company, sign conveyances of real estate make transfers of stock and securities, execute satisfaction pieces of mortgages, and use the seal of the company when necessary in the business of the company. He may appoint agents and qualify them by certificates of authority to execute contracts of insurance on behalf of the company."

He further deposes and says that the following is a true copy of an extract from the minutes of the meeting of the board of directors of the company, held at its office in the city of New York, on the 19th day of November, 1902, a quorum being present, and that the resolution contained in said extract was unanimously adopted and is now in full force and effect:

"On motion it was duly resolved—that each of the following named persons, to wit: Robert J. Hillas, of the town of West Hoboken, State of New Jersey, treasurer-secretary of the company, Henry Crossley, of the borough of Brooklyn, city and State of New York, secretary of the company, Frank E. Law of East Orange, State of New Jersey, second assistant secretary of the company, and Edward C. Lunt, of the borough of Brooklyn, city and State of New York, third assistant secretary of the company, is hereby, jointly and severally, authorized to execute on behalf of the Fidelity and Casualty Company of New York, bonds, undertakings and all contracts of suretyship, and to bind said company as surety; and to

attest the corporate seal of the company to any and all bonds, undertakings and all contracts of suretyship which shall have been
86 signed by George F. Seward, the president of the company, or by either of the other secretaries designated herein."

He further deposes and says that the seal affixed to the annexed bond of William J. Buttfield is the corporate seal of the said The Fidelity and Casualty Company of New York, and was thereto affixed by order and authority of the board of directors of said company; and that he signed his name thereto by like order and authority as third assistant secretary of said company; and that he is acquainted with and knows him to be the secretary of said company; and that the signature of said —— —— subscribed to the said bond is in the genuine handwriting of said —— ——, and was thereto subscribed by order and authority of said board of directors, or the by-laws of said company, and in the presence of said deponent, and that the assets of said company, unincumbered and liable to execution, exceed in its claims, debts, and liabilities, of every nature whatsoever, by more than the sum of five hundred dollars ($500).

He further deposes and says that —— —— residing at —— in the State of ——, has been duly appointed as the agent of said company to accept service of process against said company in the — judicial district of ——, and is authorized to enter an appearance in behalf of said company in any action, suit or proceeding brought against it in said judicial district.

[SEAL.] EDW. C. LUNT.

Acknowledged and sworn to before me and subscribed in my presence this 20th day of March, 1903.

[SEAL.] C. M. CRANE,
Commissioner of Deeds, City, County, and State of New York.

87 (Endorsed:) Approved as to form and also as to sufficiency of sureties, with reservation, however, to the defendant in error of the right at any time to examine the proper officers of the surety company, under oath, touching its assets, liabilities and financial condition generally. Alfred C. Coxe, U. S. circuit judge. M'ch 23rd, 1903.—U. S. circuit court, southern district of New York, Filed Mar. 25, 1903, John A. Shields, clerk.

88 By the Honorable Alfred C. Coxe, one of the judges of the circuit court of the United States for the southern district of New York, in the second circuit, to George R. Bidwell, Esq., Greeting:

You are hereby cited and admonished to be and appear before the Supreme Court of the United States to be holden at the Capitol, in the city of Washington, on the 20th day of April 1903, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the southern district of New York, wherein William J. Buttfield is plaintiff in error and you are defendant in error

to show cause, if any there be, why the error in said writ of error mentioned should not be corrected and speedy justice should not be done in that behalf.

Given under my hand at the borough of Manhattan, in the city of New York, in the district and circuit above named, this 23d day of March, in the year of our Lord one thousand nine hundred and three, and of the Independence of these United States the one hundred and twenty-seventh.

ALFRED C. COXE,
Judge of the Circuit Court of the United States for the Southern District of New York, in the Second Circuit.

89 [Endorsed:] E. & A. C. 2025. Supreme Court of the United States. William J. Buttfield plaintiff in error *vs.* George R. Bidwell, defendant in error. Citation. A copy of the within paper has been this day received at this office Mar. 25, 1903. Henry L. Burnett, U. S. attorney, N. Y. 16 p'd. U. S. circuit court southern district New York. Filed Mar. 25, 1903 John A. Shields, clerk.

90 At a stated term of the circuit court of the United States of America, for the southern district of New York, in the second circuit, held at the United States court rooms in the borough of Manhattan, in the city of New York, on Wednesday the 20th day of May, in the year of our Lord one thousand nine hundred and three,

Present: The Honorable E. Henry Lacombe, circuit judge.

BUTTFIELD
vs.
BIDWELL.

Ordered that the time of the appellant herein to file the record on appeal in the above entitled cause be and the same is hereby extended to and including the 20th day of June, 1903.

E. HENRY LACOMBE,
U. S. Circuit Judge.

[Endorsed:] E. & A. C. 2025 Buttfield *vs.* Bidwell. Extension.

[Endorsed:] United States Supreme Court. William J. Buttfield pl'ff in error *vs.* George R. Bidwell def't in error

Endorsed on cover: File No. 18,947. S. New York C. C. U. S. Term No. 296. William J. Buttfield, plaintiff in error, *vs.* George R. Bidwell. Filed May 27", 1903.